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WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

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Contents

Federal Register

Vol. 77, No. 5

Monday, January 9, 2012

Administrative Conference of the United States
NOTICES
Meetings:
Committee on Adjudication of the Administrative Conference of the United States, 1049

Agriculture Department
See Animal and Plant Health Inspection Service
See Grain Inspection, Packers and Stockyards Administration
See National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1051

Animal and Plant Health Inspection Service
NOTICES
Meetings:
General Conference Committee of the National Poultry Improvement Plan, 1051–1052

Antitrust Division
NOTICES
National Cooperative Research and Production Act of 1993:
ASTM International, 1085

Bureau of Consumer Financial Protection
NOTICES
Privacy Act; Systems of Records, 1049–1051

Bureau of Ocean Energy Management
RULES
Renewable Energy Alternate Uses of Existing Facilities on the Outer Continental Shelf:
Acquire a Lease Non-competitively; Correction, 1019–1020

Coast Guard
RULES
Regulated Navigation Areas:
Arthur Kill, NY and NJ, 1023–1025
S99 Alford Street Bridge Rehabilitation Project, Mystic River, MA, 1020–1023
Security Zones:
Cruise Ships, San Pedro Bay, CA, 1025–1027
NOTICES
Meetings:
National Maritime Security Advisory Committee, 1076–1077
Requests for Nominations:
Houston/Galveston Navigation Safety Advisory Committee, 1077–1078

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

Commodity Futures Trading Commission
RULES
Real-Time Public Reporting of Swap Transaction Data, 1182–1266

Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine, 1085–1086

Education Department
NOTICES
Arbitration Panel Decision under the Randolph–Sheppard Act, 1062–1063

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approval and Promulgation of State Implementation Plans:
Colorado; Interstate Transport of Pollution Revisions for the 1997 PM2.5 and 8-Hour Ozone NAAQS, etc, 1027–1039
Regulation of Fuels and Fuel Additives:
2012 Renewable Fuel Standards, 1320–1358
PROPOSED RULES
National Emission Standards for Hazardous Air Pollutant Emissions:
Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production, 1268–1318
Test Methods and Testing; Revisions, 1130–1179
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1065–1066

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 1066

Federal Aviation Administration
RULES
Airworthiness Directives:
Rolls–Royce plc (RR) RB211–524 Series Turbofan Engines, 1009–1012
Turbomeca Turboshaft Engines; Correction, 1009
Establishment of Class E Airspace:
Inverness, FL, 1012–1013
Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures, 1013–1017
PROPOSED RULES
Airworthiness Directives:
Honeywell International Inc. Turbofan Engines, 1043–1045

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
E–FOIA, 1086–1087

Federal Communications Commission
RULES
Internet-Based Telecommunications Relay Service Numbering, 1039
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1066–1072

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 1072

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 1064–1065

Federal Reserve System
NOTICES
Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities, 1072

Fish and Wildlife Service
NOTICES
Final Comprehensive Conservation Plan and Finding of No Significant Impact:
San Pablo Bay National Wildlife Refuge, Sonoma, Napa, and Solano Counties, CA, 1078–1079

Food and Drug Administration
NOTICES
Privacy Act; Systems of Records, 1073–1076

Foreign-Trade Zones Board
NOTICES
Applications for Reorganization under Alternative Site Framework:
Foreign-Trade Zone 100, Dayton, OH, 1053

Grain Inspection, Packers and Stockyards Administration
NOTICES
Requests for Nominations:
USDA Grain Inspection Advisory Committee, 1052

Health and Human Services Department
See Food and Drug Administration
PROPOSED RULES
Specifications for Medical Examinations of Underground Coal Miners, 1360–1385
NOTICES
Meetings:
National Biodefense Science Board, 1072–1073

Homeland Security Department
See Coast Guard
PROPOSED RULES
Provisional Waivers of Inadmissibility for Certain Immediate Relatives of U.S. Citizens, 1040–1043

Industry and Security Bureau
RULES
Export and Reexport License Requirements for Certain Microwave and Millimeter Wave Electronic Components, 1017–1019

Interior Department
See Bureau of Ocean Energy Management
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 1053–1058
Initiation of Antidumping Duty Changed Circumstances Reviews:
Low Enriched Uranium from France, 1059
Postponement of Final Determination of Antidumping Duty Investigation:
High Pressure Steel Cylinders from the People's Republic of China, 1060

International Trade Commission
NOTICES
Antidumping and Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Large Residential Washers from Korea and Mexico, 1082–1083
Investigations; Terminations, Modifications and Rulings:
Certain Portable Electronic Devices and Related Software, 1083–1084

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Federal Bureau of Investigation
See Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Title II of the Americans with Disabilities Act of 1990/ Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form, 1084–1085
Lodging of Consent Decree Under the Oil Pollution Act, 1085

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2012–2013 Census of State and Federal Adult Correctional Facilities, 1087–1088

Labor Department
NOTICES
Delegation of Authority and Assignment of Responsibilities to the Employee Benefits Security Administration, 1088–1089

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Grazing Permit Renewals in the Jump Creek, Succor Creek, and Cow Creek Watersheds, Boise District, ID, 1079–1080
Proposed Copper Flat Mine Plan of Operations, Sierra County, NM, 1080–1081
Realty Actions:
Classification for Lease and/or Subsequent Conveyance for Recreation and Public Purposes of Public Land in Clark County, NV, 1081–1082

Requests for Nominations:
Carrizo Plain National Monument Advisory Council, California, 1082

National Agricultural Statistics Service
NOTICES
Intent to Resume the Bee and Honey Surveys and All Associated Reports, 1052–1053

National Institute of Standards and Technology
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Survey of Need for Improvement of Infrared Reflectance Measurements and Standards, 1060–1061

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Shrimp Fisheries of the Gulf of Mexico and South Atlantic; Revisions of Bycatch Reduction Device Testing Protocols, 1045–1048
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application Forms for Membership on a National Marine Sanctuary Advisory Council, 1061
Permits:
Endangered Species; File No. 16146, 1062
Endangered Species; File Nos. 16229 and 16548, 1061–1062

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 1089

Postal Regulatory Commission
NOTICES
New Postal Products, 1089–1090
Post Office Closings, 1090–1093

Railroad Retirement Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 1093–1095

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 1095
Self-Regulatory Organizations; Proposed Rule Changes:
C2 Options Exchange, Inc., 1098–1099, 1101–1103
Chicago Mercantile Exchange, Inc., 1114–1116
Financial Industry Regulatory Authority, Inc., 1119–1124
International Securities Exchange, LLC, 1103–1106
NASDAQ OMX PHLX LLC, 1095–1101, 1106–1107, 1111–1114
NASDAQ Stock Market LLC, 1125–1126
Options Clearing Corp., 1107–1111, 1116–1119

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
NOTICES
Abandonment Exemptions:
Connecticut Southern Railroad, Inc. in Hartford County, CT, 1126–1127

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
NOTICES
Meetings:
President's Council on Jobs and Competitiveness, 1127

Separate Parts In This Issue

Part II
Environmental Protection Agency, 1130–1179

Part III
Commodity Futures Trading Commission, 1182–1266

Part IV
Environmental Protection Agency, 1268–1318

Part V
Environmental Protection Agency, 1320–1358

Part VI
Health and Human Services Department, 1360–1385

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

8 CFR
Proposed Rules:
212 1040

14 CFR
39 (2 documents) 1009
71 1012
97 (2 documents) 1013, 1015
Proposed Rules:
39 1043

15 CFR
740 1017
742 1017
774 1017

17 CFR
43 1182

30 CFR
585 1019

33 CFR
165 (3 documents) 1020, 1023, 1025

40 CFR
52 1027
80 1320
Proposed Rules:
51 1130
60 1130
61 1130
63 (2 documents) 1130, 1268

42 CFR
Proposed Rules:
37 1360

47 CFR
64 1039

50 CFR
Proposed Rules:
622 1045

Rules and Regulations

Federal Register
Vol. 77, No. 5
Monday, January 9, 2012

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0710; Directorate Identifier 2010–NE–26–AD; Amendment 39–16892; AD 2010–19–06R1]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD applies to Turbomeca Arriel 1 series turboshaft engines. The AD number is incorrect in the preamble and in the Regulatory text. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This final rule revision is effective January 17, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA; phone: (781) 238–7779; fax: (781) 238–7199; email: *frederick.zink@faa.gov*.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2011–26–02, Amendment 39–16892 (76 FR 77378, December 13, 2011), currently requires removing from service certain gas generator second stage turbine discs, part number (P/N) 0 292 25 040 0, that are not marked with ''CFR'' before the discs exceed 4,000 cycles-in-service (CIS) since new. That AD also requires removing from service certain gas generator second stage turbine discs, P/N 0 292 25 040 0, that are marked with ''CFR'' before the discs exceed 6,500 CIS since new.

As published, the AD number 2011–26–02 in the preamble of the AD and under § 39.13 [Amended], is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD revision remains January 17, 2012.

Correction of Non-Regulatory Text

In the **Federal Register** of December 13, 2011, AD 2011–26–02; Amendment 39–16892 is corrected as follows:

On page 77378, in the second column, on line 3 under 14 CFR Part 39, change AD 2011–26–02 to AD 2010–19–06R1.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of December 13, 2011, on page 77379, in the second column, lines 6 and 7 under § 39.13 [Amended] of AD 2011–26–02, are corrected to read as follows:

* * * * *

AD 2010–19–06R1 Turbomeca: Amendment 39–16892; Docket No. FAA–2010–0710;

* * * * *

Issued in Burlington, Massachusetts, on December 29, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–79 Filed 1–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD; Amendment 39–16803; AD 2011–18–21]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires initial and repetitive borescope inspections of the head section and meterpanel assembly of the combustion liner, and replacement if necessary. This new AD requires those same inspections, and replacement. This AD also expands the applicability to include part numbers (P/N) of additional combustion liners. This AD was prompted by an inquiry submitted by an operator, which resulted in RR performing a complete review of the affected front combustion liner part numbers. We are issuing this AD to prevent deterioration of the engine combustion liner, which can result in combustion liner breakup, case burn-through, engine fire, and damage to the airplane.

DATES: This AD is effective February 13, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 9, 2005 (70 FR 680, January 5, 2005).

ADDRESSES: For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011–44–1332–242424; fax: 011–44–1332–249936, for the service information identified in this proposed AD. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7143; fax: (781) 238–7199; email: *alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2004–26–05, amendment 39–13917 (70 FR 680, January 5, 2005). That AD applies to the specified products. The SNPRM published in the **Federal Register** on October 18, 2010 (75 FR 63727). The SNPRM proposed to require:

- Initial and repetitive borescope inspections of the combustion liner head section and meterpanel assembly of the combustion liner and, if necessary, replacement.
- Reduction of the inspection intervals of certain RB211–524 engine models that have not been repaired to RR Field Repair Scheme FRS5367/B, and
- A mandatory terminating action to the repetitive inspections to be completed no later than December 31, 2012.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The Boeing Company supports the SNPRM published in the **Federal Register** on October 18, 2010 (75 FR 63727).

We simplified wording for clarity in the regulatory section. We did not change the requirements of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 18 engines installed on airplanes of U.S. registry. We also estimate that it will take about 32 work-hours per engine to perform the required actions, and that the average labor rate is $85 per work-hour. Required parts will cost about $231,000. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $4,206,960.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–26–05, Amendment 39–13917 (70 FR 680, January 5, 2005), and adding the following new AD:

2011–18–21 Rolls-Royce plc: Amendment 39–16803; Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD.

(a) Effective Date

This airworthiness directive (AD) is effective February 13, 2012.

(b) Affected ADs

This AD supersedes AD 2004–26–05, Amendment 39–13917 (70 FR 680, January 5, 2005).

(c) Applicability

This AD applies to Rolls-Royce plc (RR) engine models RB211–524B–02, –524B3–02 engines and RB211–524B2, –524B4, –524C2, and –524D4 series engines with a front combustion liner assembly that incorporates RR Service Bulletin (SB) No. RB.211–72–7221 or RR SB No. RB.211–72–7998, but doesn't incorporate RR SB No. RB.211–72–9670 or RR SB No. RB.211–72–9764, and engine models RB211–524G and –524H series engines with a front combustion liner assembly that doesn't incorporate RR SB No. RB.211–72–9764.

(d) Unsafe Condition

This AD results from an inquiry submitted by an operator which resulted in RR performing a complete review of the affected front combustion liner part numbers. We are issuing this AD to prevent deterioration of the engine combustion liner, which can result in combustion liner breakup, case burn-through, engine fire, and damage to the airplane.

(e) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Credit for Previous Inspections

Engine inspections previously done using RR SB No. RB.211–72–B482, Revision 8, meet the requirements of this AD for the initial and repetitive inspections specified in paragraph (g) and Table 1 of this AD; and paragraph (h) and Table 2 of this AD.

(g) Inspections of Combustion Liner Head Sections—Not Previously Repaired

Borescope-inspect combustion liner head sections that have not been previously repaired. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR Alert Service Bulletin (ASB) No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the compliance thresholds in Table 1 of this AD to do the inspections.

TABLE 1—COMBUSTION LINER HEAD SECTION—NOT PREVIOUSLY REPAIRED

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
RB211–524C2, –524D4, –524G, and –524H.	Within 1,400 to 1,600 cycles-since-new (CSN).	Within 200 cycles-since-last inspection (CSLI).	Within 100 cycles-in-service (CIS) after the effective date of this AD.
RB211–524B–02, –524B2, –524B3–02, and –524B4.	Within 3,000 to 3,200 CSN	Within 200 CSLI	Within 200 CIS after the effective date of this AD.

(h) Inspections of Combustion Liner Head Sections—Previously Repaired Using RR Field Repair Scheme FRS5367/B

Borescope-inspect combustion liner head sections previously repaired using RR Field Repair Scheme FRS5367/B. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the compliance thresholds in Table 2 of this AD to do the inspections.

TABLE 2—COMBUSTION LINER HEAD SECTION—PREVIOUSLY REPAIRED USING RR FIELD REPAIR SCHEME FRS5367/B

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
RB211–524C2, –524D4, –524G, and –524H.	Within 1,800 to 2,200 cycles-since-last repair (CSLR).	Within 400 CSLI	Within 200 CIS after the effective date of this AD.
RB211–524B–02, –524B2, –524B3–02, and –524B4.	Within 3,000 to 3,200 CSLR	Within 400 CSLI	Within 200 CIS after the effective date of this AD.

(i) Inspections of Combustion Liner Head Sections That Have Been Repaired But Did Not Use RR Field Repair Scheme FRS5367/B

Borescope-inspect combustion liner head sections that have been repaired using a method other than RR Field Repair Scheme FRS5367/B. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the compliance thresholds in Table 3 of this AD to do the inspections.

TABLE 3—COMBUSTION LINER HEAD SECTION—REPAIRED, BUT DID NOT USE RR FIELD REPAIR SCHEME FRS5367/B

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
RB211–524C2, –524D4, –524G, and –524H.	Within 500 to 700 CSLR	Within 200 CSLI	Within 100 CIS after the effective date of this AD.
RB211–524B–02, –524B2, –524B3–02, and -524B4.	Within 2,000 to 2,200 CSLR	Within 200 CSLI	Within 200 CIS after the effective date of this AD.

(1) For an installed front combustion liner that is subject to RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, if the nicrobraze repair RR Field Repair Scheme FRS5367 has been applied to all 18 struts, then that repair is equivalent to compliance with RR Field Repair Scheme FRS5367/B.

(2) Head sections repaired by replacement of all 18 struts using RR Field Repair Scheme FRS6548 are considered as equivalent to fitting a new head section for inspection purposes.

(j) Inspections of Meterpanel Assemblies—Not Repaired

Borescope-inspect meterpanel assemblies that incorporate SB No. RB.211–72–7998, that have not been previously repaired. Use paragraphs 3.B.(1) through 3.B.(7) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the compliance thresholds in Table 4 of this AD to do the inspections.

TABLE 4—METERPANEL ASSEMBLY—NOT REPAIRED

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
RB211–524D4, –524G, and –524H	Within 1,000 to 1,200 CSN	Within 400 CSLI	Within 50 CIS after the effective date of this AD.
RB211–524D4, –524G, and –524H that have not used RB211–524H ratings at any time.	Within 1,800 to 2,000 CSN	Within 400 CSLI	Within 50 CIS after the effective date of this AD.

(k) Inspections of Meterpanel Assemblies—Repaired

Borescope-inspect meterpanel assemblies that incorporate SB No. RB.211–72–7998, that have been previously repaired. Use paragraphs 3.B.(1) through 3.B.(7) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the compliance thresholds in Table 5 of this AD to do the inspections.

TABLE 5—METERPANEL ASSEMBLY—REPAIRED

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
RB211–524D4, –524G, and –524H..	Within 500 to 700 CSLR	Within 400 CSLI	Within 50 CIS after the effective date of this AD.

(l) Reject Parts

Remove from service, parts that exceed the acceptance criteria.

(m) Mandatory Terminating Action

Replace any front combustion liner assembly that has a P/N listed in paragraph (c) of this AD at the next shop visit.

(1) For RB211–524B–02, –524B3–02, –524B4, –524C2 and –524B2, –524B4, –524C2, and –524D4 series engines, replacing the front combustion liner assembly with a front combustion liner assembly that incorporates the modifications in RR SB No. RB.211–72–9670, Original Issue, dated August 27, 1993; or RR SB No. RB.211–72–9764, Revision 3, dated January 16, 1998, constitutes terminating action to the repetitive inspections in paragraphs (g), (h), (i), (j), and (k) of this AD.

(2) For RB211–524G and –524H engines, replacing the front combustion liner assembly with a front combustion liner assembly that incorporates the modifications in RR SB No. RB.211–72–9764, Revision 3, dated January 16, 1998, constitutes terminating action to the repetitive inspections in paragraphs (f), (g), (h), (i), and (j) of this AD.

(n) Definition of Shop Visit

For the purpose of this AD, a shop visit is any time that the 04 module is removed for refurbishment or overhaul.

(o) Related Information

Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7143; fax: (781) 238–7199; email: *alan.strom@faa.gov*, for more information about this AD.

(p) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on the date specified:

(1) Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AB482, Revision 9, July 28, 2003, approved for IBR February 9, 2005 (70 FR 680, January 5, 2005).

(2) Rolls-Royce plc Service Bulletin No. RB.211–72–9670, Original Issue, August 27, 1993, approved for IBR February 9, 2005 (70 FR 680, January 5, 2005).

(3) Rolls-Royce plc Service Bulletin No. RB.211–72–9764, Revision 3, January 16, 1998, approved for IBR February 9, 2005 (70 FR 680, January 5, 2005).

(4) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011–44–1332–242424; fax: 011–44–1332–249936.

(5) You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

(6) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on December 28, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–134 Filed 1–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0540; Airspace Docket No. 11–ASO–20]

Establishment of Class E Airspace; Inverness, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Inverness, FL, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures serving Inverness Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective 0901 UTC, April 5, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Inverness, FL (76 FR 66871) Docket No. FAA–2011–0540. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the geographic coordinates for Inverness Airport needed to be adjusted. This action makes that adjustment. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes the Class E airspace extending upward from 700 feet above the surface at Inverness, FL to provide the controlled airspace required to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures developed for Inverness Airport. This action is necessary for the safety and management of IFR operations at the airport. This action also adjusts the geographic coordinates

of the airport to be in concert with the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Inverness Airport, Inverness, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

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

* * * * *

ASO FL E5 Inverness, FL [New]

Inverness Airport, FL
(Lat. 28°48′13″ N, long. 82°19′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Inverness Airport.

Issued in College Park, Georgia, on December 28, 2011.

Jack Schroeter,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–55 Filed 1–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30820; Amdt. No. 3459]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 9, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 9, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic

depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on December 23, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
9–Feb-12	NC	Greensboro	Piedmont Triad Intl	1/0284	12/9/11	RNAV (GPS) RWY 5L, Orig
9–Feb–12	NC	Greensboro	Piedmont Triad Intl	1/0285	12/9/11	RNAV (GPS) RWY 23R, Orig
9–Feb–12	CQ	Rota Island	Rota Intl	1/2192	12/9/11	NDB RWY 9, Amdt 3B
9–Feb–12	CQ	Rota Island	Rota Intl	1/2193	12/9/11	NDB RWY 27, Amdt 3C
9–Feb–12	CQ	Rota Island	Rota Intl	1/2194	12/9/11	Takeoff Minimums and Obstacle DP, Amdt 1A
9–Feb–12	TX	Lago Vista	Lago Vista TX—Rusty Allen	1/2396	12/21/11	GPS RWY 15, Orig
9–Feb–12	AR	Paragould	Kirk Field	1/2397	12/21/11	RNAV (GPS) RWY 22, Orig-A
9–Feb–12	AR	Clinton	Holley Mountain Airpark	1/2398	12/21/11	RNAV (GPS) RWY 5, Amdt 1A
9–Feb–12	AR	Clinton	Holley Mountain Airpark	1/2399	12/21/11	RNAV (GPS) RWY 23, Amdt 1
9–Feb–12	SD	Martin	Martin Muni	1/2402	12/21/11	GPS RWY 32, Orig
9–Feb–12	WI	Necedah	Necedah	1/2408	12/21/11	RNAV (GPS) RWY 36, Orig-A
9–Feb–12	ND	Rolla	Rolla Muni	1/2409	12/21/11	GPS RWY 32, Orig
9–Feb–12	NV	Reno	Reno/Tahoe Intl	1/3515	12/21/11	RNAV (RNP) Z RWY 34L, Orig
9–Feb–12	NV	Reno	Reno/Tahoe Intl	1/3516	12/21/11	RNAV (RNP) Z RWY 34R, Orig
9–Feb–12	AZ	Prescott	Ernest A. Love Field	1/3517	12/21/11	RNAV (RNP) RWY 3R, Orig
9–Feb–12	WI	Phillips	Price County	1/3689	12/21/11	RNAV (GPS) RWY 19, Orig
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8872	12/9/11	ILS OR LOC RWY 4L, Amdt 13A
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8873	12/9/11	VOR/DME RWY 22L, Orig-B
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8874	12/9/11	VOR/DME RWY 22R, Amdt 4B
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8875	12/9/11	GLS RWY 4L, Orig-A
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8876	12/9/11	GLS RWY 22R, Orig-A
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8877	12/9/11	ILS OR LOC RWY 4R, ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 12B
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8878	12/9/11	ILS OR LOC RWY 22R, Amdt 5
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8879	12/9/11	RNAV (GPS) Z RWY 22L, Amdt 1C
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8880	12/9/11	RNAV (GPS) RWY 4L, Amdt 1A
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8881	12/9/11	RNAV (GPS) RWY 22R, Amdt 1A

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8882	12/9/11	RNAV (GPS) RWY 11, Orig-B
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8883	12/9/11	ILS OR LOC RWY 11, Amdt 2A
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8884	12/9/11	RNAV (GPS) Y RWY 4R, Amdt 1B
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8885	12/9/11	VOR RWY 11, Amdt 2B
9–Feb–12	NJ	Newark	Newark Liberty Intl	1/8886	12/9/11	GLS RWY 4R, Orig-A
9–Feb–12	ID	Pocatello	Pocatello Rgnl	1/8900	11/30/11	VOR/DME OR TACAN RWY 21, Amdt 10A
9–Feb–12	PA	Zelienople	Zelienople Muni	1/9814	12/9/11	RNAV (GPS) RWY 35, Orig-D

[FR Doc. 2012–22 Filed 1–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30819; Amdt. No. 3458]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 9, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 9, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to:*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close

and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on December 23, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 9 FEB 2012

Barrow, AK, Wiley Post-Will Rogers Memorial, ILS OR LOC/DME RWY 7, Orig-A
Birmingham, AL, Birmingham-Shuttlesworth Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Arcata/Eureka, CA, Arcata, ILS Y OR LOC/DME RWY 32, Amdt 2
Arcata/Eureka, CA, Arcata, ILS Z RWY 32, Amdt 30
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 1, Amdt 1
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 14, Amdt 1
Arcata/Eureka, CA, Arcata, RNAV (GPS) RWY 32, Amdt 1
Arcata/Eureka, CA, Arcata, Takeoff Minimums and Obstacle DP, Amdt 7
Arcata/Eureka, CA, Arcata, VOR/DME RWY 1, Amdt 8
Arcata/Eureka, CA, Arcata, VOR/DME RWY 14, Amdt 1
San Diego, CA, San Diego Intl, LOC RWY 27, Amdt 4
San Diego, CA, San Diego Intl, RNAV (GPS) RWY 27, Amdt 2
South Lake Tahoe, CA, Lake Tahoe, Takeoff Minimums and Obstacle DP, Amdt 6
Greeley, CO, Greeley-Weld County, VOR–A, Amdt 9
Rota Island-North Mariana Island, CQ, Rota Intl, GPS RWY 9, Orig-C, CANCELLED
Rota Island-North Mariana Island, CQ, Rota Intl, GPS RWY 27, Orig-C, CANCELLED
Rota Island-North Mariana Island, CQ, Rota Intl, RNAV (GPS) RWY 9, Orig
Rota Island-North Mariana Island, CQ, Rota Intl, RNAV (GPS) RWY 27, Orig
Groton/New London, CT, Groton-New London, Takeoff Minimums and Obstacle DP, Amdt 8
Wilmington, DE, New Castle, VOR RWY 1, Amdt 4, CANCELLED
Wilmington, DE, New Castle, VOR RWY 27, Amdt 4
Leesburg, FL, Leesburg Intl, RNAV (GPS) RWY 3, Amdt 1A
Tallahassee/Havana, FL, Tallahassee Commercial, RNAV (GPS) RWY 16, Orig, CANCELLED
Tallahassee/Havana, FL, Tallahassee Commercial, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Tallahassee/Havana, FL, Tallahassee Commercial, VOR OR GPS–A, Amdt 5B, CANCELLED
Brunswick, GA, Malcolm McKinnon, Takeoff Minimums and Obstacle DP, Amdt 3
Thomasville, GA, Thomasville Rgnl, ILS OR LOC RWY 22, Orig-B
Kaunakakai, HI, Molokai, VOR OR TACAN–A, Amdt 16
Lihue, HI, Lihue, VOR/DME OR TACAN RWY 21, Amdt 4A
Sioux City, IA, Sioux Gateway/Col Bud Day Field, ILS OR LOC RWY 13, Amdt 2
Champaign/Urbana, IL, University of Illinois-Willard, LOC/DME BC RWY 14L, Amdt 8A, CANCELLED
Augusta, KS, Augusta Muni, GPS RWY 36, Orig, CANCELLED
Augusta, KS, Augusta Muni, RNAV (GPS) RWY 36, Orig
Augusta, KS, Augusta Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Hazard, KY, Wendell H Ford, LOC/DME RWY 14, Orig
Westminster, MD, Clearview Airpark, RNAV (GPS) RWY 14, Amdt 1
Detroit, MI, Willow Run, VOR–A, Amdt 1
Forsyth, MT, Tillitt Field, NDB RWY 26, Amdt 3
Forsyth, MT, Tillitt Field, Takeoff Minimums and Obstacle DP, Orig
Glasgow, MT, Wokal Field/Glasgow Intl, GPS RWY 12, Orig, CANCELLED
Glasgow, MT, Wokal Field/Glasgow Intl, NDB RWY 30, Amdt 2
Glasgow, MT, Wokal Field/Glasgow Intl, RNAV (GPS) RWY 12, Orig
Glasgow, MT, Wokal Field/Glasgow Intl, RNAV (GPS) RWY 30, Orig
Glasgow, MT, Wokal Field/Glasgow Intl, VOR RWY 30, Amdt 4
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 4, Amdt 1
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 22, Amdt 1
Mohall, ND, Mohall Muni, VOR/DME RWY 31, Amdt 2C, CANCELLED
Mohall, ND, Mohall Muni, VOR/DME–A, Orig
Pender, NE., Pender Muni, RNAV (GPS) RWY 15, Orig
Pender, NE., Pender Muni, RNAV (GPS) RWY 33, Orig
Pender, NE., Pender Muni, Takeoff Minimums and Obstacle DP, Orig
Blairstown, NJ, Blairstown, RNAV (GPS) RWY 25, Amdt 2
West Milford, NJ, Greenwood Lake, RNAV (GPS) RWY 6, Amdt 1
West Milford, NJ, Greenwood Lake, RNAV (GPS) RWY 24, Orig
West Milford, NJ, Greenwood Lake, Takeoff Minimums and Obstacle DP, Amdt 2
Waverly, TN, Humphreys County, NDB RWY 21, Amdt 3B
Arlington, TX, Arlington Muni, ILS OR LOC/DME RWY 34, Amdt 2
Arlington, TX, Arlington Muni, RNAV (GPS) RWY 34, Amdt 3
Atlanta, TX, Hall-Miller Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Bay City, TX, Bay City Muni, GPS RWY 13, Orig-B, CANCELLED
Bay City, TX, Bay City Muni, GPS RWY 31, Orig-B, CANCELLED
Bay City, TX, Bay City Muni, RNAV (GPS) RWY 13, Orig
Bay City, TX, Bay City Muni, RNAV (GPS) RWY 31, Orig
Denton, TX, Denton Muni, RNAV (GPS) RWY 36, Amdt 1

El Paso, TX, El Paso Intl, RNAV (GPS) Y RWY 26L, Amdt 1
El Paso, TX, El Paso Intl, VOR RWY 26L, Amdt 32
Houston, TX, Sugar Land Rgnl, ILS OR LOC RWY 35, Amdt 4
Houston, TX, Sugar Land Rgnl, RNAV (GPS) RWY 35, Amdt 2
Houston, TX, Sugar Land Rgnl, VOR/DME–A, Amdt 2
Marshall, TX, Harrison County, GPS RWY 33, Orig-F, CANCELLED
Marshall, TX, Harrison County, RNAV (GPS) RWY 15, Orig
Marshall, TX, Harrison County, RNAV (GPS) RWY 33, Orig
Marshall, TX, Harrison County, Takeoff Minimums and Obstacle DP, Orig
Monahans, TX, Roy Hurd Memorial, GPS RWY 12, Orig-B, CANCELLED
Monahans, TX, Roy Hurd Memorial, GPS RWY 30, Orig-B, CANCELLED
Monahans, TX, Roy Hurd Memorial, RNAV (GPS) RWY 12, Orig
Monahans, TX, Roy Hurd Memorial, RNAV (GPS) RWY 30, Orig
Vernal, UT, Vernal Rgnl, RNAV (GPS) RWY 34, Amdt 1
Hoquiam, WA, Bowerman, ILS OR LOC/DME RWY 24, Amdt 4
Hoquiam, WA, Bowerman, RNAV (GPS) RWY 24, Amdt 2
Port Angeles, WA, Port Angeles CGAS, COPTER NDB 242, Amdt 1
Port Angeles, WA, Port Angeles CGAS, COPTER RNAV (GPS) RWY 26, Orig
Port Angeles, WA, Port Angeles CGAS, Takeoff Minimums and Obstacle DP, Amdt 4
Madison, WI, Dane County Rgnl—Truax Field, ILS OR LOC/DME RWY 18, Amdt 1A
Madison, WI, Dane County Rgnl—Truax Field, ILS OR LOC/DME RWY 36, Amdt 1A

[FR Doc. 2012–25 Filed 1–6–12; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742 and 774

[Docket No. 110825537–1539–02]

RIN 0694–AF38

Export and Reexport License Requirements for Certain Microwave and Millimeter Wave Electronic Components

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule imposes a license requirement on exports and reexports to all destinations other than Canada of two types of microwave and millimeter wave electronic components. The two components are packaged high electron mobility transistors and packaged microwave ''monolithic integrated circuits'' power amplifiers that meet certain criteria with respect to frequency range, size and output power. BIS takes this step to control exports and reexports of these components, which have uses in military radar systems as well as in civilian radar and telecommunications systems. The U.S. Government also plans to propose adding these components to the Dual List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement Dual Use List) in 2012.

DATES: *Effective date:* January 9, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Baker, Director, Electronics and Materials Division, Office of National Security and Technology Transfer Controls, (202) 482–5534, *brian.baker@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: This rule imposes a license requirement on exports and reexports to all destinations other than Canada of two types of microwave and millimeter wave electronic components. The two components are packaged high electron mobility transistors (HEMT) and packaged microwave ''monolithic integrated circuits'' (MMIC) power amplifiers. The U.S. Government plans to propose adding these components to the Wassenaar Arrangement Dual-Use List in 2012.

This rule imposes this license requirement by creating a new Export Control Classification Number (ECCN) 3A982 containing two ''items'' paragraphs. Paragraph 3A982.a covers packaged HEMTs with physical dimensions less than 43 mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having either an average output power equal to or greater than 48 W (46.8 dBm); or a pulsed output power equal to or greater than 240 W (53.8 dBm) and a duty cycle of 20 percent or more.

Paragraph 3A982.b covers packaged MMIC power amplifiers with physical dimensions less than 43mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having either an average output power equal to or greater than 15W (41.7 dBm); or a pulsed output power equal to or greater than 75 W (48.75 dBm) and a duty cycle of 20 percent or more.

This rule also creates new ECCNs 3D982 and 3E982 to control the software and technology, respectively, associated with the new controls set forth in new ECCN 3A982.

This rule also revises License Exception STA (§ 740.20 of the EAR) to preclude use of License Exception STA for any export, reexport or transfer of items in ECCN 3A982.b.

The U.S. Government plans to submit a proposal for control of the commodities covered by ECCN 3A982 in 2012. BIS publishes this rule to protect against the diversion of these items to users or for uses that would threaten the security of the United States or that of its allies.

The application of regional stability and antiterrorism controls to the items covered by this rule imposes 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 December 29, 2011.

The Export Administration Act of 1979, as amended, expired on August 21, 2001. Since this lapse, the President has continued the EAR in effect through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), under the authority of the International Emergency Economic Powers Act, with the most recent extension being implemented by the Notice of August 12, 2011 (76 FR 50661 (August 16, 2011)). BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

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, distribute 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 designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is 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 OMB Control Number. This rule affects an existing approved collection 0694–0088, Simple Network Application Process and Multipurpose Application Form for which the estimated burden is 58 minutes per submission. BIS does not believe that this rule will materially increase the number of submissions under this collection.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 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 is implementing this rule to protect U.S. national security or foreign policy interests by imposing an export and reexport license requirement on two items that are used in military radar systems. The U.S. Government plans to propose that these two items be added to the Wassenaar Arrangement Dual-Use List. Immediate imposition of a license requirement is necessary to effect the national security and foreign policy goals of this rule. Immediate implementation will allow BIS to prevent exports of these items to users and for uses that pose a security threat to the United States or its allies. If BIS published a proposed rule soliciting notice and comment, the resulting delay in implementation would afford an opportunity to export these items to users and uses that pose such a security threat, thereby undermining the purpose of the rule. Furthermore, by demonstrating its own willingness to impose a license requirement on its exports of these items, this rule will provide support for the planned United States proposal that the Wassenaar Arrangement should add these items to its Dual-Use List. Inclusion of these items on the Wassenaar Arrangement Dual-Use and the resulting implementation of export license requirements by other Wassenaar Arrangement will further the goal of this rule by removing potential sources of these items for parties who would act in ways that threaten the security of the United States or its allies.

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.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 2. Section 740.20 is amended by adding paragraph (b)(2)(viii) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(b) * * *

(2) * * *

(viii) License Exception STA may not be used to export, reexport or transfer any packaged microwave ''monolithic integrated circuits'' (MMIC) power amplifiers classified under ECCN 3A982.b.

* * * * *

PART 742—[AMENDED]

■ 3. The authority citation for part 742 continues 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; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 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. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

§ 742.6 [Amended]

■ 4. Section 742.6(a)(1) is amended by adding the phrase ''3A982; 3D982; 3E982; '' immediately following the phrase ''for items described on the CCL under ECCNs''

PART 774—[AMENDED]

■ 5. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

■ 6. Supplement No. 1 to Part 774—the Commerce Control List, Category 3, Export Control Classification Number 3A001 is amended by adding two sentences at the end of the ''Related Controls'' paragraph of the ''List of Items Controlled'' section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

3A001 Electronic components and specially designed components therefor, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Related Controls: * * * (3) See ECCN 3A982.a for discrete microwave transistors not controlled by paragraph .b.3 of this entry. (4) Packaged microwave ''monolithic integrated circuits'' (packaged MMIC) power amplifiers that operate within the frequency range specified in 3A982.b and that have the dimensional and output power characteristics specified for packaged MMIC power amplifiers specified in ECCN 3A982 are controlled by ECCN 3A982 even if such packaged MMIC power amplifiers also operate within the frequency range specified in ECCN 3A001.b.2.a.

* * * * *

■ 7. Supplement No. 1 to Part 774—the Commerce Control List, Category 3, is amended by adding, immediately following the entry for Export Control Classification Number (ECCN) 3A981 and immediately preceding the entry for ECCN 3A991, a new ECCN 3A982 entry to read as follows:

3A982 Microwave or millimeter wave components that operate at frequencies below those controlled by 3A001 as follows (See List of Items Controlled).

License Requirements

Reasons for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: (1) See ECCN 3A001.b.2 for certain microwave ''monolithic integrated circuits'' (MMIC) power amplifiers other than those controlled by this entry. (2) See ECCN 3A001.b.3 for discrete microwave transistors other than those controlled by this entry. (3) See ECCN 3A001.h for high electron mobility transistors that are solid state semiconductor switches, diodes or modules rather than discrete microwave transistors.
Related Definitions: N/A
Items:

a. Packaged high electron mobility transistors (HEMTs) with physical dimensions less than 43 mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having any of the following:

a.1. An average output power equal to or greater than 48 W (46.8 dBm); or

a.2. A pulsed output power equal to or greater than 240 W (53.8 dBm) and a duty cycle of 20 percent or more.

b. Packaged microwave ''monolithic integrated circuits'' (MMIC) power amplifiers with physical dimensions less than 43mm per side, rated for operation at frequencies from 2.7 GHz up to and including 3.2 GHz and having either of the following:

b.1. An average output power equal to or greater than 15W (41.7 dBm); or

b.2. A pulsed output power equal to or greater than 75 W (48.75 dBm) and a duty cycle of 20 percent or more.

■ 8. Supplement No. 1 to Part 774—The Commerce Control List is amended by adding immediately following the entry for ECCN 3D980 and immediately preceding the entry for ECCN 3D991 a new entry 3D982 to read as follows:

3D982 ''Software'' ''specially designed'' for the ''development'' or ''production'' of microwave or millimeter wave components classified under ECCN 3A982.

License Requirements

Reasons for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is in the ECCN heading.

■ 9. Supplement No. 1 to Part 774—The Commerce Control List is amended by adding immediately following the entry for ECCN 3E980 and immediately preceding the entry for ECCN 3E991 a new entry 3E982 to read as follows:

3E982 ''Technology'' ''required'' for the ''development'' or ''production'' of microwave or millimeter wave components classified under ECCN 3A982.

License Requirements

Reasons for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items: The list of items controlled is in the ECCN heading.

Dated: January 3, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–135 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 585

[Docket ID: BOEM–2010–0045]

RIN 1010–AD79

Renewable Energy Alternate Uses of Existing Facilities on the Outer Continental Shelf—Acquire a Lease Non-competitively; Correction

AGENCY: Bureau of Ocean Energy Management, (BOEM), Interior.

ACTION: Correcting amendments.

SUMMARY: This document corrects amendments contained in a direct final rule published in the **Federal Register** on October 18, 2011, and involves only that portion of the rule related to acquiring a lease non-competitively for offshore renewable energy projects.

DATES: *Effective Date:* This correction is effective on January 9, 2012.

FOR FURTHER INFORMATION CONTACT: Peter Meffert, Regulatory Affairs, BOEM, at (703) 787–1610, fax (703) 787–1555, or email *peter.meffert@boem.gov* or Timothy Redding, Renewable Energy, BOEM, at (703) 787–1219 or email *Timothy.Redding@boem.gov.*

SUPPLEMENTARY INFORMATION: BOEM is correcting portions of its previously published direct final rule that misstated existing regulatory text having to do with acquiring a lease non-competitively for offshore renewable energy projects. The corrections involve §§ 585.231 and 585.232.

List of Subjects in 30 CFR Part 585

Continental shelf, Environmental protection, Incorporation by reference, Public lands.

Dated: December 21, 2011.

Marcilynn A. Burke,

Acting Assistant Secretary—Land and Minerals Management.

Accordingly, the Bureau of Ocean Energy Management is making the correcting amendments to 30 CFR part 585 as follows:

PART 585—RENEWABLE ENERGY AND ALTERNATE USES OF EXISTING FACILITIES ON THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 585 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.,* 43 U.S.C. 1337.

■ 2. Amend § 585.231 by revising paragraph (d)(1) to read as follows:

§ 585.231 How will BOEM process my unsolicited request to acquire a lease non-competitively?

* * * * *

(d) * * *

(1) A notice that BOEM has made a determination that there is no competitive interest will be published in the **Federal Register**; and

* * * * *

■ 3. Amend § 585.232 by revising paragraph (c) to read as follows:

§ 585.232 May I acquire a lease noncompetitively after responding to a Request for Interest or Call for Information and Nominations?

* * * * *

(c) After receiving the acquisition fee, BOEM will follow the process outlined in § 585.231(d) through (i).

[FR Doc. 2012–50 Filed 1–6–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1125]

RIN 1625–AA11

Regulated Navigation Area; S99 Alford Street Bridge Rehabilitation Project, Mystic River, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The United States Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Mystic River under and surrounding the S99 Alford Street Bridge which crosses the Mystic River between Boston and Chelsea, Massachusetts. This temporary interim rule is intended to protect both vessels and construction workers by restricting vessel traffic during periods where the bridge is being repaired.

DATES: This rule is effective in the CFR on January 9, 2012 through November 30, 2012. This rule is effective with actual notice for purposes of enforcement from December 27, 2011 until 11:59 p.m. on November 30, 2012. Public comments will be accepted and reviewed by the Coast Guard through November 30, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1125 using any one of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1125 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1125 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone (617) 223–4000, email *Mark.E.Cutter@uscg.mil;* or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone (617) 223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

As this temporary interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1125), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–1125'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit 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 rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1125'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting within the meaning of the

Administrative Procedure Act (APA), 5 U.S.C. 553. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe such a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

The Coast Guard has held or participated in one informal waterway user meeting where waterway closures and restrictions were discussed. We anticipate holding additional informal meetings, with opportunity for public questions or comments, during this project. We will provide written summaries of any such meetings in the docket.

Regulatory Information

The Coast Guard is issuing this interim rule without prior **Federal Register** notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not provided enough notice by the Commonwealth of Massachusetts to allow for a notice and comment period.

A full waterway closure was not requested of the Coast Guard until November 23, 2011, when the Massachusetts Department of Transportation (MA DOT) requested a complete waterway closure beginning December 12, 2011 until May 31, 2012. MA DOT's request for full waterway closure was not timely according to the existing Coast Guard requirements, and the late submission did not give the Coast Guard enough time to publish an NPRM in order to solicit comments concerning a waterway closure before implementing this interim rule.

It is still in the public interest to promulgate this rule, as it is necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the bridge construction zone. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a full notice and comment period would be contrary to the public interest as it would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to reopen for normal operations. The Coast Guard believes it would be impracticable and contrary to the public interest to delay this regulation. At any time, the Coast Guard may publish an amended rule if necessary to address public concerns.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this interim rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the rehabilitation project of the S99 Alford Street Bridge.

Discussion of Rule

This action is intended to control vessel traffic for the duration of the S99 Alford Street Bridge rehabilitation over the main channel of the Mystic River. The Coast Guard may close the regulated area described in this rule to all vessel traffic during any circumstance that poses an imminent threat to waterway users operating in the area. Complete waterway closures will be made with as much advance notice as possible.

The COTP Sector Boston will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by all appropriate means to ensure the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, and Marine Safety Information Bulletins.

Entry into this RNA is prohibited unless authorized by the COTP Sector Boston. Any violation of this RNA is punishable by civil and criminal penalties, in rem liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant-mariner credentials.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal because the amount of traffic in this waterway is extremely limited. Furthermore, the Captain of the Port has the ability to suspend the provisions of this regulation when necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners or operators of marinas, businesses (such as waterside restaurants), and vessels who intend to transit in the Mystic River beneath the S99 Alford Street Bridge during the effective period.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: The primary waterway users, of which there are very few, are recreational vessels of various sizes and do not normally operate during the months between December and April. Many parties that have the potential to be affected have been involved in the discussions and have made plans to work around the closure times. We will use appropriate means to inform the public before, during, and at the conclusion of any RNA enforcement period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of an RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.** Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist and categorical exclusion determination as appropriate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–1125 to read as follows:

§ 165.T01–1125 Regulated Navigation Area; S99 Alford Street Bridge rehabilitation project, Mystic River, MA

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters of the Mystic River between Boston and Chelsea, MA, from surface to bottom, within 100 yards of any point on the S99 Alford Street Bridge.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply in addition to those provisions outlined below.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of

enforcement, is prohibited unless authorized by Captain of the Port (COTP) Sector Boston.

(3) All persons and vessels must comply with all directions given to them by the COTP Sector Boston or the on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel or other designated craft, or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(5) Notwithstanding any other provisions in this regulation, the movement of official, emergency vessels within the regulated area is permitted provided that the contractor is notified in order to remove potential hazards or obstructions.

(6) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) *Enforcement Period:*

(1) This regulated navigation area is enforceable 24 hours a day from December 27, 2011 through November 30, 2012.

(2) Suspension of enforcement: The COTP Sector Boston will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification may include but are not limited to Broadcast Notice to Mariners, Local Notice to Mariners and Marine Safety Information Bulletins. Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) Report violations of this regulated navigation area to the COTP Sector Boston, at (617) 223–5757 or on VHF–Channel 16.

Dated: December 27, 2011.

D.A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2012–104 Filed 1–6–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0727]

RIN 1625–AA11

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is amending the Regulated Navigation Area (RNA) in the navigable waters of the Arthur Kill in New York and New Jersey. The amendment allows the Coast Guard to suspend enforcement of some RNA requirements when they are found to be impracticable and unnecessary for the maintenance of safety.

DATES: This rule is effective in the CFR on January 9, 2012 until 5 p.m. on April 1, 2014. This rule is effective with actual notice for purposes of enforcement from December 16, 2011, until 5 p.m. on April 1, 2014. Public comments will be accepted and reviewed by the Coast Guard through April 1, 2014.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0727 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0727 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, U.S. Coast Guard Sector New York Waterways Management Division, Coast Guard; telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil,* or Lieutenant Junior Grade Isaac Slavitt, Coast Guard First District Waterways Management Branch, telephone (617) 223–8385, email *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

The Coast Guard will evaluate and revise this rule as necessary to address significant public comments. Alternatively, if the dredging project necessitating the interim rule is completed before April 1, 2014, and we receive no public comments that indicate a substantive need to revise the rule, we may allow it to expire on that date without further regulatory action.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0727), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0727'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during

the comment period and will consider those comments before issuing a final rule.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0727'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting within the meaning of the Administrative Procedure Act (APA), 5 U.S.C. 553. But you may submit a request for one using one of the four methods specified under **ADDRESSES.** Please explain why you believe such a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.** The Coast Guard has held or participated in 17 locally announced informal waterway user meetings where waterway closures and restrictions were discussed. We anticipate holding additional informal meetings, with opportunity for public questions or comments, during this project. We will provide written summaries of any such meetings in the docket.

Regulatory Information

This temporary interim rule (TIR) is the second to address the RNA in the Arthur Kill. An earlier TIR added the basic RNA regulation for that waterway: 33 CFR 165.T01–0727 (76 FR 52569; Aug. 23, 2011).

We are issuing this second TIR without prior notice and opportunity to comment, under the authority of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), and giving effect to it immediately (with actual notice) under the authority of the APA, 5 U.S.C. 553(d)(1). This second TIR adds 33 CFR 165.T01–0727(b)(9), which allows us to suspend the enforcement of specific RNA requirements. We find good cause for adding paragraph (b)(9) without prior notice and comment, and without the normal 30-day APA waiting period, because doing so relieves a regulatory restriction that would require strict observation of the RNA's requirements under all conditions, and because we know of conditions under which it would be unnecessary and contrary to the public interest for us to enforce those requirements: At three informal meetings held with stakeholders between July and September 2011, we learned that the RNA's requirement to maintain a distance of at least 150 feet from drilling and blasting equipment is not feasible for large commercial ships with tugs alongside. Moreover, the distance requirement is not necessary for the protection of safety, when all drilling and blasting equipment is located in an enclosed portion of the navigable channel away from the normal flow of marine traffic. We can foresee other possible circumstances in which it would be contrary to the public interest and unnecessary for safety to enforce the RNA's requirements. It would be impracticable and contrary to the public interest to continue enforcing those requirements solely to allow time for publication of a notice of proposed rulemaking and for taking public comments on such a notice.

Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment during the ongoing channel deepening project.

Background

The RNA encompasses all waters of the North of Shooters Island Reach, Elizabethport Reach, and Gulfport Reach in the Arthur Kill. Consult the first TIR for further background information on the RNA. Drilling and blasting operations began in the Arthur Kill on Tuesday, August 2, 2011. We expect those operations to conclude within the lifespan of this second TIR, which like the first expires on April 1, 2014.

Discussion of Comments and Changes

We received comments from the harbor pilots during the locally announced informal waterway user meetings held between July and September 2011. They noted that the requirement for all vessels to remain at least 150 feet from drilling and blasting equipment is not feasible for large commercial ships with tugs alongside, and unnecessary for the protection of safety when all drilling and blasting equipment is located in an enclosed portion of the navigable channel away from the normal flow of marine traffic. We agree and are adding paragraph (b)(9) to the regulatory text for our RNA, allowing us to suspend enforcement of specific requirements under circumstances such as these, upon a mariner giving appropriate notice of a vessel transit in the regulated area.

Regulatory Analyses

We developed both the first TIR and this second TIR after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. For a discussion of the RNA's overall economic impact, see our first TIR. The economic impact of this second TIR's addition of 33 CFR 165.T01–0727(b)(9) will be favorable because it allows us to suspend enforcement of provisions against the regulated public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. In the first TIR, we certified under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, and we supported that certification. We

repeat that certification for this second TIR, which will have a favorable though insignificant impact on small entities by allowing us to suspend enforcement of provisions against them.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we continue to offer to assist small entities in understanding the RNA and its impact on them.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Miscellaneous

The amendment made by this second TIR allows us to suspend enforcement of the RNA's requirements. As such, the amendment has no further impact on the analyses included in the first TIR of collection of information (Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520); Federalism (Executive Order 13132), the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the taking of private property (Executive Order 12630), civil justice reform (Executive Order 12988), protection of children (Executive Order 13045), Indian tribal governments (Executive Order 13175), energy (Executive Order 13211), technical standards (the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note), or the environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D. This rule involves the establishment of a RNA. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In 33 CFR 165.T01–0727, add paragraph (b)(9) to read as follows:

§ 165.T01–0727 Regulated Navigation Area; Arthur Kill, NY and NJ.

* * * * *

(b) * * *

(9) Suspension of enforcement: the Captain of the Port (COTP) New York will cause notice of enforcement, suspension of enforcement, or closure of the waterway to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners and Vessel Traffic Service New York (VTSNY). Such notification will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

* * * * *

Dated: December 16, 2011.

D.A. Neptun,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2012–108 Filed 1–6–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0101]

RIN 1625–AA87

Security Zones; Cruise Ships, San Pedro Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending a security zone regulation for cruise ships visiting San Pedro Bay, California by providing a common description of all security zones to encompass only navigable waters within a 100-yard radius around any cruise ship that is located within the San Pedro Bay port area landward of the sea buoys bounding the Port of Los Angeles or Port of Long Beach or at designated anchorages within 3 nautical miles of the Federal breakwater. This rule is necessary to provide for the safety of the cruise ship, vessels, and users of the waterway. Entry into these security zones will be prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles—Long Beach, or his designated representative.

DATES: This rule is effective February 8, 2012.

ADDRESSES: The contents of the online docket for this rulemaking, USCG–2011–0101, may be viewed by going to *http://www.regulations.gov,* inserting USCG–2011–0101 in the ''Keyword box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ensign Stephen M. Sanders, Assistant Chief, Waterways Management, Coast Guard Sector Los Angeles—Long Beach, Coast Guard; telephone (310) 521–3860, email *Stephen.M.Sanders@uscg.mil.* If you have any questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

Regulatory Information

On August 16, 2011, we published a noticed of proposed rulemaking (NPRM) entitled Security Zones; Cruise Ships, San Pedro Bay, CA in the **Federal Register** (76 FR 50710). We received no comments on the proposed rule, either through the electronic docket office, or directly to Coast Guard Sector Los Angeles—Long Beach. A public meeting was not requested, and none were held.

Basis and Purpose

Based on experience with actual security zone enforcement operations, the COTP Los Angeles—Long Beach has concluded that a security zone is needed encompassing all navigable waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is within the San Pedro Bay port area inside the sea buoys bounding the Port of Los Angeles or Port of Long Beach or at designated anchorages within 3 nautical miles of the Federal breakwater. This

will provide for the safety of the cruise ship, vessels, and users of the waterway.

Background

The Coast Guard is amending an existing security zone regulation. The security zones created by this rule will encompass only navigable waters within a 100-yard radius around any cruise ship that is located within the San Pedro Bay port area landward of the sea buoys bounding the Port of Los Angeles or Port of Long Beach or at designated anchorages within 3 nautical miles of the Federal breakwater. These security zones are necessary to provide for the safety of the cruise ship, vessels, and users of the waterway. Entry into these security zones is prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles—Long Beach, or his designated representative.

Paragraph (b)(1) and (b)(2) of the existing 33 CFR 165.1154 includes reference to the shore area and cruise ships anchored at designated anchorages either inside or outside at designated anchorages within 3 nautical miles of the Federal breakwaters. The COTP has determined that security zones for moored cruise ships in Los Angeles—Long Beach Harbors need not include any shore area, as passenger terminals used for cruise ship operations are regulated under regulations in 33 CFR part 105 issued under authority of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295). In addition to clarifying the area covered by security zones created by § 165.1154(b), this rule simplifies the regulation by not distinguishing between anchored cruise ships, moored cruise ships, and cruise ships underway. Also, § 165.1154 paragraph (c) is amended to make it clear that persons and vessels may not enter these security zones without first obtaining permission of the Captain of the Port.

Discussion of Comments and Changes

There were no comments submitted to the electronic docket or to the Coast Guard Sector Los Angeles—Long Beach. No changes were made from the proposed regulation.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under Executive Order 13563, Improving Regulation and Regulatory Review. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that full Regulatory Evaluation is unnecessary. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. In addition, due to National Security interests, the implementation of this security zone regulation is necessary for the protection of the United States and its people. The size of the zones is the minimum necessary to provide adequate protection for cruise ships.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in Los Angeles—Long Beach ports within a 100-yard radius of cruise ships covered by this rule.

This security zone regulation will not have a significant economic impact on a substantial number of small entities because vessel traffic can pass safely around the zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34) (g), of the Instruction. This rule involves amending a security zone regulation by removing the reference to shore area in security zones for moored cruise ships. An environmental analysis checklist and a categorical exclusion determination are available in the docket were indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.1154, revise paragraphs (b) and (c) to read as follows:

§ 165.1154 Security Zones; Moored Cruise Ships, San Pedro Bay, California.

* * * * *

(b) *Location.* The following areas are security zones: All navigable waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship that is located within the San Pedro Bay area landward of the sea buoys bounding the port of Los Angeles or Port of Long Beach or designated anchorages within 3 nautical miles seaward of the Federal Breakwaters.

(c) *Regulations.* Under regulations in 33 CFR part 165, subpart D, a person or vessel may not entry into or remain in the security zones created by this section unless authorized by the Coast Guard Captain of the Port, Los Angeles—Long Beach (COTP) or a COTP designated representative.

(1) Persons desiring to transit these security zones may contact the COTP at telephone number (310) 521–3801 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(2) When a cruise ship approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's security zone unless it is either ordered by, or given permission from, the COTP Los Angeles-Long Beach to do otherwise.

* * * * *

Dated: December 23, 2011.

R.R. Laferriere,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles—Long Beach.

[FR Doc. 2012–109 Filed 1–6–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–1037; FRL–9506–8]

Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution Revisions for the 1997 $PM_{2.5}$ and 8-Hour Ozone NAAQS: ''Significant Contribution,'' ''Interference With Maintenance,'' and ''Interference With Prevention of Significant Deterioration'' Requirements; Revisions to Regulation No. 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of a State Implementation Plan (SIP) revision submitted by the State of Colorado for the purpose of addressing the ''good neighbor'' provisions of Clean Air Act (''Act'' or ''CAA'') section 110(a)(2)(D)(i) for the 1997 8-hour ozone National Ambient Air Quality Standards (''NAAQS'' or ''standards'') and the 1997 fine particulate matter (''$PM_{2.5}$'') NAAQS. This SIP revision addresses the requirement that the State of Colorado's SIP (''Interstate Transport SIP'') have adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. In this action, EPA is approving the Colorado Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i) that emissions from Colorado sources do not significantly contribute to nonattainment of the 1997 $PM_{2.5}$ NAAQS in any other state, interfere with maintenance of the 1997 $PM_{2.5}$ NAAQS by any other state, or interfere with any other state's required measures to prevent significant deterioration of air quality for the 1997 $PM_{2.5}$ and 8-hour ozone NAAQS. EPA is

also approving certain revisions to Colorado Regulation No. 3 submitted by the State of Colorado in separate prior submissions. This action is being taken under section 110 of the CAA.

DATES: *Effective Date:* This final rule is effective February 8, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2007–1037. Documents related to EPA's December 7, 2005 proposed approval of changes to Colorado Regulation No. 3 (70 FR 72744) can be found in a docket under Docket ID No. R08–OAR–2005–CO–0003. All documents in the dockets 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 whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov*.

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 United States Environmental Protection Agency.

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

(iv) The words *Colorado* and *State* mean the State of Colorado.

Table of Contents

I . Background
II. Response to Comments
III. Section 110(l)
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

Colorado Interstate Transport SIP for the 1997 8-hour Ozone and $PM_{2.5}$ NAAQS

On July 18, 1997, EPA promulgated new NAAQS for ozone and for $PM_{2.5}$. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (''2006 Guidance'').[1] The 2006 Guidance recommends ways states may, in their submissions, meet the requirements of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ standards.

As identified in the 2006 Guidance, the ''good neighbor'' provisions in section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) identifies four distinct requirements related to the impacts of interstate transport. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS by any other state; (3) interfere with required measures to prevent significant deterioration of air quality in any other state; or (4) interfere with efforts to protect visibility in any other state. Requirements (1) and (2) are found under 110(a)(2)(D)(i)(I), and requirements (3) and (4) are found under 110(a)(2)(D)(i)(II).

On June 11, 2008, the State of Colorado submitted to EPA an Interstate Transport SIP addressing all four requirements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS. In response to EPA's concerns regarding the June 11, 2008 submission, the State later submitted two superseding interstate transport SIP revisions: (a) a June 18, 2009 submission addressing requirements (1) and (2) of section 110(a)(2)(D)(i) for the 1997 8-hour ozone NAAQS; and (b) a March 31, 2010 submission addressing requirements (3) and (4) for the 1997 8-hour ozone NAAQS and requirements (1) through (4) for the 1997 $PM_{2.5}$ NAAQS. EPA approved Colorado's Interstate Transport SIP with respect to the ''significant contribution to nonattainment'' and the ''interfere with maintenance'' requirements for the 1997 8-hour ozone NAAQS in final rule actions published June 3 and November 22, 2010 (75 FR 31306; 75 FR 71029). EPA approved Colorado's Interstate Transport SIP with respect to the ''interfere with visibility'' requirement for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS on April 20, 2011 (76 FR 22036).

After those actions, the pending portions of Colorado's Interstate Transport SIP are those that address requirements (1), (2), and (3) for the 1997 $PM_{2.5}$ NAAQS and requirement (3) for the 1997 8-hour ozone NAAQS. On April 19, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Colorado (76 FR 21835) to act on the pending portions. Specifically, in the NPR EPA proposed approval of the language and demonstration of the March 31, 2010 submission that addresses three requirements of section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ NAAQS: (1) Prohibition of significant contribution to nonattainment of the NAAQS in any other state, (2) prohibition of interference with maintenance of the NAAQS by any other state, and (3) prohibition of interference with other states' required measures to prevent significant deterioration of air quality. EPA is also approving the language and demonstration that addresses requirement (3) of section 110(a)(2)(D)(i)—prohibition of interference with other states' required measures to prevent significant deterioration of air quality—with respect to the 1997 8-hour ozone NAAQS.

Colorado Regulation No. 3, Part D: New Source Review and Prevention of Significant Deterioration (PSD)

The 2006 Guidance states that the interference with PSD requirement of section 110(a)(2)(D)(i)(II) may be met by the State's confirmation in a SIP submission that new major sources and major modifications in the State are subject to PSD and (if the State contains a nonattainment area for the relevant

[1] Memorandum from William T. Harnett entitled, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Aug. 15, 2006).

pollutant) Nonattainment New Source Review (NNSR) programs that implement the relevant standards according to current requirements.[2] Colorado's SIP-approved PSD and NNSR programs are contained in Colorado Regulation No. 3.

The State of Colorado submitted revisions to Colorado Regulation No. 3 on July 11, 2005, and submitted a supplement to those revisions on October 25, 2005, in response to EPA's concerns. The two submissions reorganized Regulation No. 3 by moving much of the previously approved language from other sections of Regulation 3 into the newly created Part D. The submissions then incorporated EPA's December 31, 2002 NSR Reform rule (67 FR 80186) into Part D, applying the reforms to both the State's PSD and NNSR programs. In its submissions, Colorado distinguished the revised language that incorporated NSR Reform from the language for the existing PSD and NSR programs (as reorganized into part D) by italicizing language that was to be added to the existing programs and by underlining language that was to be removed from the existing programs. Colorado's submission indicated that the addition of the italicized language and removal of the underlined language was to become effective only after EPA approved those changes into Colorado's SIP. EPA proposed approval of the October 25, 2005 submission on December 7, 2005 (70 FR 72744).[3] EPA's proposed approval received extensive comments, and EPA has not yet finalized it.

On August 1, 2007, the State submitted to EPA revisions to Regulation No. 3. These revisions (among other things) updated the State's PSD and NNSR programs to meet the requirements of EPA's Phase 2 implementation rule for the 1997 8-hour ozone NAAQS (''Phase 2 Rule'') (70 FR 71612, Nov. 29, 2005). In the April 19, 2011 NPR (76 FR 21835) for today's action, EPA proposed approval of portions of the August 1, 2007 submission, specifically the portions that implement the Phase 2 rule by treating nitrogen oxides as an ozone precursor. Because these portions are in part D of Regulation No. 3, which was created by the July 11, 2005 and the October 25, 2005 submissions, the August 1, 2007 revisions depend on those earlier submissions. Specifically, the August 1, 2007 revisions depend on the following parts: The reorganization of the existing PSD and NNSR programs into part D of Regulation No. 3, the introduction of the term ''regulated NSR pollutant,'' and the associated replacement in existing portions of the PSD and NNSR program of the regulatory phrase ''air pollutant subject to regulation under the Act'' with the term ''regulated NSR pollutant.'' As explained in greater detail in section IV below, in this action we also finalize the December 7, 2005 proposed approval of these portions of the July 11, 2005 and October 25, 2005 submissions.

Finally, the NPR included language explaining that EPA would approve the State's 110(a)(2)(D)(i) submission for the PSD requirement in its entirety for both NAAQS if the State submitted a letter clarifying that its Interstate Transport SIP submission should be read to rely only on the portion of Colorado's PSD program that remains approved after the PSD SIP Narrowing Rule (75 FR 82536, Dec. 30, 2010) took effect. The State submitted to EPA a letter making this clarification on May 10, 2011.[4]

II. Response to Comments

EPA received no comments on its April 19, 2011 proposed approval of portions of Colorado's Interstate Transport SIP and of portions of Colorado's August 1, 2007 submission addressing requirements of the Phase 2 Rule. EPA did receive comments on the December 7, 2005 proposal to approve Colorado's July 11, 2005 and October 25, 2005 submissions. EPA does not consider any of these comments applicable to the portions of the December 7, 2005 proposal we are finalizing with today's action. However, to the extent that some comments could be understood to apply to the portions we are approving with this action, EPA addresses these particular comments below. These comments fell into three categories: (1) Comments that argued that approval would violate the requirements of section 110(l) of the Act; (2) comments that argued that approval would violate the requirements of section 193 of the Act; and (3) comments that generally (without a specific legal basis) opposed approval.

First, with regards to section 110(l), the only substantive change to Colorado's PSD and NNSR programs in the submissions that EPA approves today is the addition of the defined term ''regulated NSR pollutant'' and the use of that term in place of the previous regulatory phrase, ''air pollutant subject to regulation under the Federal Act.'' As noted in the preamble to the NSR Reform rules, (67 FR at 80239–40), the effect of introducing the term ''regulated NSR pollutant'' was to exclude from the PSD program hazardous air pollutants (HAPS) listed under section 112 of the Act, except for HAPS that are a constituent or precursor of a more general pollutant regulated under section 108 of the Act. EPA explained that this change clarified which pollutants are covered under the PSD program and responded to the addition of section 112(b)(6) in the 1990 Clean Air Act Amendments.

Section 110(l) provides in relevant part: ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement of [the Act].'' The exclusion of HAPS from the PSD program to the extent described above does not affect any applicable requirement concerning attainment and reasonable further progress, as those requirements are specific to criteria pollutants and their precursors. Furthermore, the exclusion does not interfere with any other applicable requirement; in fact, it implements the requirement of section 112(b)(6) of the Act. Finally, this revision does not relax any applicable requirements, and is merely a clarification of the applicability of the PSD program. Therefore, approval of the specified portions of the October 25, 2005 submission does not violate section 110(l).

Similarly, approval of these portions does not violate section 193 of the Act. Section 193 prohibits modification after November 15, 1990 of any ''control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant * * * unless the modification insures equivalent or greater emission reductions of such air pollutant.'' As the introduction of the term ''regulated NSR pollutant'' leaves unchanged control requirements for criteria pollutants, the portions of the July 11, 2005 and October 25, 2005 submissions approved in this action do not violate the prohibition of section 193. Finally, in response to comments that generally (without a specific legal basis) opposed EPA's proposed approval of the July 11, 2005 and October 25, 2005 submissions, EPA notes that section 110(k)(3) requires us to approve SIP submissions that meet all of the applicable requirements of the Act. Although we

[2] 2006 Guidance at 6.

[3] The December 7, 2005 proposed approval and all supporting documentation, including both the July 11, 2005 and October 25, 2005 submissions can be found in docket R08–OAR–2005–CO–0003–FRL–8005–6.

[4] This letter is available for view in the docket for this action.

acknowledge the opposition to our approval of the 2005 submissions, the comments do not provide a basis for us to act otherwise.

III. Section 110(l)

Section 110(l) of the CAA prohibits EPA from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. As explained in section II above, EPA's approval of specific portions of the July 11, 2005 and October 25, 2005 submissions revising Regulation No. 3 does not violate section 110(l). EPA's approval of the Interstate Transport SIP also does not violate section 110(l), as the Interstate Transport SIP does not revise or remove any existing emissions limitation for any NAAQS, or any other existing substantive SIP provision relevant to the 1997 8-hour ozone or $PM_{2.5}$ NAAQS. Finally, the portions of the August 1, 2007 submission acted on here, in treating NO_X as a precursor to ozone, make the Colorado SIP more stringent; EPA's approval of these portions therefore does not violate section 110(l).

IV. Final Action

EPA is approving portions of the Colorado Interstate Transport SIP revisions submitted by the State on March 31, 2010. Specifically, in this action EPA is approving the language and demonstration of the March 31, 2010 submission that addresses three requirements of section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ NAAQS: (1) Prohibition of significant contribution to nonattainment of the NAAQS in any other state, (2) prohibition of interference with maintenance of the NAAQS by any other state, and (3) prohibition of interference with other states' required measures to prevent significant deterioration of air quality. EPA is also approving the language and demonstration that addresses requirement (3) of section 110(a)(2)(D)(i)—prohibition of interference with other states' required measures to prevent significant deterioration of air quality—with respect to the 1997 8-hour ozone NAAQS. The reasons for this action are detailed in our notice proposing approval of the portions of the March 31, 2010 submission for these requirements (76 FR 21835). In brief, our analysis of the weight of evidence indicated that emissions from Colorado do not have the impacts prohibited by the requirements (1) and (2) with respect to the 1997 $PM_{2.5}$ NAAQS. In addition, we noted that a clarification by Colorado of its interpretation of EPA's interim guidance on use of PM_{10} as a surrogate for $PM_{2.5}$ allowed us to propose approval of Colorado's Interstate Transport SIP with regards to requirement (3) for the 1997 $PM_{2.5}$ NAAQS. Finally, we explained that concurrent approval of the portions of the August 1, 2007 submittal (finalized below) implementing the Phase 2 Rule would allow us to approve the Interstate Transport SIP with regards to requirement (3) for the 1997 ozone NAAQS.

EPA is also approving certain revisions to Colorado's PSD and NNSR programs in this action. These revisions were submitted by the State on July 11, 2005 and October 25, 2005, and proposed for approval by EPA on December 7, 2005 (70 FR 72744); in part, the revisions reorganize the previously approved PSD and NNSR programs in Regulation 3 into Part D. With the exception of the provisions submitted in 2007 that implement the requirements of the Phase 2 Rule (listed in Table 2.) and that supersede the 2005 submittals, we are approving the following provisions from the 2005 submittals. We are generally approving the text in Part D that is plain or (except as described below) underlined; this language reflects the reorganization of the PSD and NNSR programs into Part D. EPA is also approving portions of Regulation 3 Part D that were added or revised by the State in response to EPA's December 31, 2002 NSR Reform rule and that were included in the July 11, 2005 and October 25, 2005 submissions. These particular portions were also proposed for approval in the December 7, 2005 NPR (70 FR 72744). Specifically, these portions are: (1) The addition of the term ''regulated NSR pollutant'' in italicized text (including when used in the phrase ''With respect to any regulated NSR pollutant emitted by any major stationary source''); and (2) the addition of italicized text and removal of underlined text that reflects the replacement of the term ''air pollutant subject to regulation under the Federal Act'' (or an equivalent phrase) with ''regulated NSR pollutant.''

TABLE 1

Provision location in Colorado's current SIP Reg 3 (NA = not in current Colorado SIP)	Provision location in Colorado's 4/16/2004 Reg 3 revision	Provision description	EPA is incorporating all or part of revision or addition into the SIP [5]	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	Comment (if applicable, see footnote)
A–I.B.1.	D–II.A.1.	Actual emissions definition	Yes	51.166(b)(21) 51.165(a)(1)(xii)	Note the reference in this definition to ''I.B.1.a'' should be to ''II.A.1.a.'' and Colorado will correct this reference in a future revision of Regulation No. 3. See footnote 5.
A–I.B.7.	D–II.A.3.	Air Quality Related Value definition.	Yes	NA	EPA is approving this definition. See footnote 2.
A–I.B.8.	A–I.B.7.	Allowable Emissions definition	No	51.166(b)(16) 51.165(a)(1)(xi)	See footnote 1.
A–I.B.10.	D–II.A.5.	Baseline Area definition	Yes	51.166(b)(15)	EPA is approving this definition. See footnote 2.
A–I.B.11.	D–II.A.6.	Baseline Concentration definition	Yes	51.166(b)(13)	EPA is approving this definition. See footnote 2.
A–I.B.12.	D–II.A.8.	Best Available Control Technology definition.	Yes	51.166(b)(12) 51.165(a)(1)(xl)	EPA is approving this definition. See footnote 4.
A–I.B.15.	D–II.A.12.	Complete definition (for PSD/NSR purposes).	Yes	51.166(b)(22)	EPA is approving this definition. The reference in II.A.12.a.(vii) of this definition to ''III.G.4. of Part B'' is not in the current codified SIP. See footnote 2.

TABLE 1—Continued

Provision location in Colorado's current SIP Reg 3 (NA = not in current Colorado SIP)	Provision location in Colorado's 4/16/2004 Reg 3 revision	Provision description	EPA is incorporating all or part of revision or addition into the SIP [5]	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	Comment (if applicable, see footnote)
A–I.B.21.	D–II.A.16.	Federal Land Manager definition	Yes	51.166(b)(24) 51.165(a)(1)(xlii)	EPA is approving this definition. See footnote 2.
A–I.B.31.	D–II.A.19.	Innovative Control Technology definition.	Yes	51.166(b)(19)	EPA is approving this definition. See footnote 2.
A–I.B.32.	D–II.A.21.	Lowest Achievable Emission Rate definition.	Yes	51.166(b)(52) 51.165(a)(1)(xiii)	EPA is approving the renumbering of this definition. See footnote 3.
A–I.B.33.	D–II.A.24.	Major Source Baseline Date definition.	Yes	51.166(b)(14)(i)	EPA is approving this definition. See footnote 2.
A–I.B.34.	D–II.A.26.	Minor Source Baseline Date definition.	Yes	51.166(b)(14)(ii)	EPA is approving this definition. See footnote 2.
A–I.B.35.b.	D–II.A.23. (except II.A.23.a, d(iii),(viii),(x), (xi), and (e)—see below).	Major Modification definition	Yes, except as noted below.	51.166(b)(2) 51.165(a)(1)(v)	EPA is approving the renumbering of all of II.23 (except sections D–II.A.23.d.(viii), (x), and (xi)), and, in II.A.23, prior to subsection II.A.23.a, the replacement of the term ''air pollutant subject to regulation under the Federal Act or the State Act'' with the term ''regulated NSR pollutant.'' Note that the provision in II.A.23.e that references ''section II.A.2'' should reference ''II.A.31'' and Colorado will correct this reference in a future revision of Regulation 3. See Footnote 5.
N/A	D–II.A.23.d.(iii)	Use of an alternative fuel at a steam generating unit. (part of Major Modification definition).	No	51.166(b)(2)(iii)(d) 51.165(a)(1)(v)(C)(4)(iv)	EPA is not taking action on this section at this time. See footnote 1.
N/A	D–II.A.23.d(viii)	Addition replacement or use of a PCP * * *. (part of Major Modification definition).	No	51.166(b)(2)(iii)(h) 51.165(a)(1)(v)(C)(8)	EPA is not taking action on this section at this time. See footnote 1.
N/A	D–II.A.23.d(x)	The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering* * *. (part of Major Modification definition).	No, as noted	51.166(b)(2)(j)	EPA is not taking action on this section at this time. See footnotes 1 and 7.
N/A	D–II.A.23.d(xi)	The reactivation of a very clean coal fired electric utility steam generating unit. (part of Major Modification definition).	No, as noted	51.166(b)(2)(k)	EPA is not taking action on this section at this time. See footnotes 1 and 7.
N/A	D–II.A.23.e.	This definition shall not apply * * * for a PAL. (part of Major Modification definition).	No	51.166(b)(2)(iv) 51.165(a)(1)(v)(D)	EPA is not taking action on this section at this time. Note that the reference in this definition should be to II.A.31 not II.A.2., and Colorado will correct this reference in a future revision of Regulation 3. See footnote 1.
A–I.B.36.	D–II.A.27. (except II.A.27.c.(iv) and II.A.27.g.(v)).	Net Emissions Increase definition	Yes, except as noted below.	51.166(b)(3) 51.165(a)(1)(vi)	Colorado has added additional language at II.A.27.c.(iii), and II.A.27.g.(i) EPA is approving the renumbering of this provision and the addition of the phrase ''With respect to any regulated NSR pollutant emitted by a major stationary source,'' in II.A.27.a. Note that provision II.A.27.a.(i) references ''I.A.4.'' However, there is no I.A.4.and this reference will be deleted by Colorado. See footnote 5.
N/A	D–II.A.27.c.(iv)	Net emissions increase at a clean unit. (part of Net Emissions Increase definition).	No	51.166(b)(3)(iii)(c) 51.165(a)(1)(vi)(C)(3)	EPA is not taking action on this part of the definition at this time.

TABLE 1—Continued

Provision location in Colorado's current SIP Reg 3 (NA = not in current Colorado SIP)	Provision location in Colorado's 4/16/2004 Reg 3 revision	Provision description	EPA is incorporating all or part of revision or addition into the SIP [5]	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	Comment (if applicable, see footnote)
N/A	D–II.A.27.g.(v)	Net emissions increase at a clean unit and pollution control project. (part of Net Emissions Increase definition).	No	51.166(b)(3)(vi)(d) 51.165(a)(1)(vi)(E)(5)	EPA is not taking action on this part of the definition at this time.
A–I.B.44	A–I.B.35.	Potential to Emit definition	No	51.166(b)(4) 51.165(a)(1)(iii)	EPA is not taking action on this definition. See footnote 1.
A–I.B.55.	D–II.A.43.	Secondary Emissions definition	Yes	51.166.(b)(18) 51.165(a)(1)(viii)	EPA is approving the renumbering of this definition. See footnote 3.
A–I.B.57.	D–II.A.44. (except II.A.44.a).	Significant definition	Yes	51.166.(b)(23) 51.165(a)(1)(x)	EPA is approving this definition. See footnote 2.
A–I.B.58. Major Stationary Source.	D–II.A.25.	Major Stationary Source definition (introductory).	Yes, except as noted below.	51.166(b)(1)(i) 51.165(a)(1)(iv)	EPA is approving this definition except for section D–II.A.25.b. See footnote 2.
A–I.B.58.a.	D–II.A.25.b.	For the purpose of determining whether a source in a non-attainment area is subject * * *. (part of Major Stationary Source definition).	No, as noted	51.165(a)(1)(iv)(A)(1)	EPA is not taking action, at this time, on this part of the definition. Provision A–I.B.58.a. in the current codified SIP remains in effect as part of the definition of Major Stationary Source. See footnote 1.
A–I.B.58.b.	D–II.A.25.a.	For the purpose of determining whether a source in an attainment or unclassifiable area. (part of Major Stationary Source definition).	Yes	51.166(b)(1)(i)(a)	EPA is approving this definition. See footnote 2.
A–I.B.58.c.	D–II.A.25.c.	Major stationary source includes any physical change that would occur at a stationary source. (part of Major Stationary Source definition).	Yes	51.166(b)(1)(i)(c) 51.165(a)(1)(iv)(A)(2)	EPA is approving this definition. See footnote 2.
A–I.B.58.d.	D–II.A.25.d.	A major stationary source that is major for volatile organic compounds shall be considered major * * *. (part of Major Stationary Source definition).	No	51.166(b)(1)(ii) 51.165(a)(1)(iv)(B)	EPA is not approving this definition. See footnote 1.
A–I.B.58.f.	D–II.A.25.e.	The fugitive emissions of a stationary source shall not be included. (part of Major Stationary Source definition).	Yes	51.166(b)(1)(iii) 51.165(a)(1)(iv)(C)	EPA is approving this definition. See footnote 2.
A–I.B.58.e.	D–II.A.25.f.	Emissions caused by indirect air pollution sources. (part of Major Stationary Source definition).	Yes	NA	EPA is approving this definition. The reference in this definition to "I.B.22. of Part A" is at is at A–I.B.58. in the current codified SIP. See footnote 2.
A–I.B.58.g.	D–II.A.25.g.	A major stationary source in the Denver Metro PM10 * * *. (part of Major Stationary Source definition).	No	NA	EPA is not acting on this definition in this action. This definition was not included in Colorado's October 25, 2005 submission of Regulation No. 3, and was therefore proposed for approval erroneously in EPA's December 7, 2005 proposed approval. See footnote 1.
N/A	D–III.	Permit Review Procedures	Yes	NA	EPA is approving this section. See footnote 6.
N/A	D–III.A.	Major Stationary Sources must apply for CP or OP.	Yes	NA	EPA is approving this section. See footnote 6.
B–IV.B.5.	D–III.B.	Process PSD applications w/in 12 months.	Yes	NA	EPA is approving this section. See footnote 2.
N/A	D–IV.	Public Comment Requirements	Yes	51.166(q)	EPA is approving this section. See footnote 6.
N/A	D–IV.A.	Public Notice	Yes	51.166(q)	Copied from Part B, IV.C.4. of current codified SIP. EPA is approving this section. The reference in D–IV.A. to "III.C.3. of Part B" is at B–IV.C.3. in the current codified SIP. See footnote 6.

TABLE 1—Continued

Provision location in Colorado's current SIP Reg 3 (NA = not in current Colorado SIP)	Provision location in Colorado's 4/16/2004 Reg 3 revision	Provision description	EPA is incorporating all or part of revision or addition into the SIP [5]	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	Comment (if applicable, see footnote)
B–IV.C.4.—from "For sources subject to the provisions of section IV.D.3." to "The newspaper notice".	D–IV.A.1.	Public notice of NSR and PSD permit applications.	Yes	51.166(q)(ii) and (iv)	EPA is approving this section. See footnote 2.
B–IV.C.4.f.	D–IV.A.2.	Additionally, for permit applications * * * (request comment on).	Yes	51.166(q)(iii)	EPA is approving this section. See footnote 2.
B–IV.C.5.	D–IV.A.3.	Within 15 days after prepare PA	Yes	NA	EPA is approving this section. See footnote 2.
B–IV.C.6.	D–IV.A.4.	Hearing request for innovative control.	Yes	NA	EPA is approving this section. See footnote 2.
B–IV.C.7.	D–IV.A.5.	Hearing request transmitted to commission.	Yes	NA	EPA is approving this section. See footnote 2.
B–IV.C.8.	D–IV.A.6.	Commission shall hold public comment hearing.	Yes	51.166(q)(v)	EPA is approving this section. See footnote 2.
B–IV.C.9.	D–IV.A.7.	15 days after division makes final decision on application.	Yes	51.166(q)(viii)	EPA is approving this section. See footnote 2.
B–IV.D.2.	D–V.	Requirements Applicable to Nonattainment Areas (Introductory).	Yes	NA	EPA is approving this section. See footnote 2.
B–IV.D.2.a.	D–V.A.	Major Stationary Sources	Yes	51.165, Appx. S.IV.A.	EPA is approving this section. The reference in D–V.A. to "III.D.1. of Part B" is at B–IV.D.1. in the current codified SIP. See footnote 2.
B–IV.D.2.a.(i) through (iii)	D–V.A.1. through 3..	Major Stationary Sources	Yes	51.165, Appx. S.IV.A. Conditions 1–4	EPA is approving this section. See footnote 2.
B–IV.D.2.a.(iii)(C) 2nd par	D–V.A.3.d.	With respect to offsets from outside nonattainment area.	Yes	51.165, Appx. S.IV.D.	EPA is approving this section. See footnote 2.
B–IV.D.2.a.(iv)	D–V.A.4.	The permit application shall include an analysis of alternative sites * * *.	Yes	51.165, Appx. S.IV.D.	EPA is approving this section. See footnote 2.
B–IV.D.2.a.(v)	D–V.A.5.	Offsets for which emission reduction credit is taken * * *.	Yes	51.165, Appx. S.V.A.	EPA is approving this section. See footnote 2.
B–IV.D.2.a.(vi)	D–V.A.6.	The applicant will demonstrate that emissions from the proposed source will not adversely impact visibility * * *.	Yes	NA	EPA is approving this section. See footnote 2.
B–IV.D.2.b.	D–V.A.7.	Applicability of Certain Nonattainment Area Requirements.	Yes	NA	EPA is approving this section. See footnote 2.
B–IV.D.2.b.(i)	D–V.A.7.a.	Any major stationary source in a nonattainment area * * *.	Yes	NA	EPA is approving this section. See footnote 2.
B–IV.D.2.b.(ii)	D–V.A.7.b.	The requirements of section V.A. shall apply at such time that any stationary source * * *.	Yes	51.165(a)(5)(ii)	EPA is approving this section. See footnote 2.
N/A	D–V.A.7.c.	The following provisions apply to projects at existing emissions units * * * ("Reasonable possibility" provisions in nonattainment areas). (part of Applicability of Certain Nonattainment Area Requirements).	No	51.165(a)(6)	EPA is not taking action on this provision at this time. See footnote 1.
N/A	D–V.A.7.d.	Documents available for review upon request. (part of Applicability of Certain Nonattainment Area Requirements).	No	51.165(a)(7)	EPA is not taking action on this section at this time. See footnote 1.
B–IV.D.2.c. (and subsections).	D–V.A.8.	Exemptions from Certain Nonattainment Area Requirements.	Yes	51.165, Appx. S.IV.B..	EPA is approving this section. See footnote 2.
B–IV.D.3.	D–VI.	Requirements Applicable to Attainment Areas. (Introductory)	Yes	NA	EPA is approving this provision. See footnote 2.
B–IV.D.3.a. (and subsections not listed below).	D–VI.A.	Major Stationary Sources and Major Modifications.	Yes	51.166(j)	EPA is approving this provision. The reference in D–VI.A. to "III.D.1. of Part B" is at B–IV.D.1. in the current codified SIP. See footnote 2.
B–IV.D.3.a.(i)(C)	D–VI.A.1.c.	For phased construction * * *	Yes	51.166(j)(4)	EPA is approving the renumbering of this provision. See footnote 3.
B–IV.D.3.a.(iii)(D)	D–VI.A.3.d.	In general, the continuous air monitoring data.	Yes	51.166(m)(1)(iv)	EPA is approving this provision. See footnote 2.

TABLE 1—Continued

Provision location in Colorado's current SIP Reg 3 (NA = not in current Colorado SIP)	Provision location in Colorado's 4/16/2004 Reg 3 revision	Provision description	EPA is incorporating all or part of revision or addition into the SIP [5]	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	Comment (if applicable, see footnote)
B–IV.D.3.a.(iii)(D)	D–VI.A.4.	Post-construction monitoring	Yes	51.166(m)(2)	EPA is approving this provision. Colorado has revised this provision to make post construction monitoring at the director's discretion as allowed by 51.166(m)(2). See footnote 2.
B–IV.D.3.a(vi)	D–VI.A.6	Additional Impact Analysis	Yes		EPA is approving the renumbering of this provision. See footnote 3.
B–IV.D.3.b.	D–VI.B.	Applicability of Certain PSD Requirements.	Yes	NA	EPA is approving this provision. See footnote 2.
B–IV.D.3.b.(i)	D–VI.B.1.	The requirements of section VI.A. do not apply * * *.	Yes	51.166(i)(1) and (2)	EPA is approving this provision. See footnote 2.
B–IV.D.3.b.(ii)	D–VI.B.2.	The requirements contained in sections VI.A.2. through VI.A.4.	Yes	51.166(i)(3) and (4)	EPA is approving this provision. See footnote 2.
B–IV.D.3.b.(iii)	D–VI.B.3. (including D–VI.B.3.b., c., and d.).	The division may exempt a proposed major stationary source or major modification from the requirements of sections VI.A.3. through VI.A.5. of this Part, with respect to monitoring for a particular pollutant if * * *.	Yes	51.166(i)(5)	Colorado has reworded D–VI.B.3. and deleted unnecessary language. EPA is approving this provision. See footnote 2.
B–IV.D.3.b.(iii)(A)(1)–(12)	D–VI.B.3.a.(i)–(ix).	Deleted Mercury, Beryllium, Vinyl chloride.	Yes	51.166(i)(5)(i)	EPA is approving this provision. The deletion is consistent with section 112(b)(6) of the Act. See related discussion in section II, Response to Comments. See footnote 2.
B–IV.D.3.b.(iv)	D–VI.B.4.	The requirements of this Part D shall apply * * *.	Yes	51.166(i)(6)	EPA is approving this provision. See footnote 2.
N/A	D–VI.B.5.	The following provisions apply to projects at existing emissions units (''Reasonable possibility'' provisions PSD). (part of Applicability of Certain PSD Requirements).	No	51.166(r)(6)	EPA is not taking action on this provision at this time. See footnote 1.
N/A	D–VI.B.6.	Documents available for review upon request. (part of Applicability of Certain PSD Requirements).	No	51.166(r)(7)	EPA is not taking action on this section at this time. See footnote 1.
B–IV.D.3.b.(v)	D–VI.B.7.	A stationary source or modification may apply.	Yes	51.166(i)(9)	EPA is approving this provision. See footnote 2.
B–IV.D.3.c.	D–VI.C.	Notice to EPA	Yes	51.166(p)(1)	EPA is approving this provision. See footnote 2.
B–IV.D.3.d.	D–VI.D.	Major Stationary Sources in attainment areas affecting non-attainment area.	Yes	51.165(b)	EPA is approving this section. The reference in D–VI.D. to ''III.D.1. of Part B'' is at B–IV.D.1. in the current codified SIP. See footnote 2.
B–IV.D.4.	D–VII.	Negligibly Reactive VOCs	Yes	51.100(s)	EPA is approving this provision. See footnote 2.
B–V.	D–VIII.	Area Classifications	Yes, with the exception of D–VIII.B.	51.166(e)	EPA is approving this provision with the exception of D–VIII.B. See footnote 2.
N/A	D–VIII.B.	All other areas of Colorado, (part of Area Classifications).	No	NA	EPA is not taking action on this section at this time. See footnote 1.
B–VI.	D–IX.	Redesignation	Yes	51.166(e)	EPA is approving this provision. See footnote 2.
B–VII.	D–X.	Air Quality Limitations	Yes, with the exception of D–X.A.5.	51.166(c)	EPA is approving this provision with the exception of D–X.A.5. See footnote 2.
N/A	D–X.A.5.	Increment Consumption Restriction. (part of Air Quality Limitations)	No	NA	EPA is not taking action on this provision at this time. See footnote 1.
B–VIII.	D–XI.	Exclusions from Increment Consumption.	Yes	51.166(f)	EPA is approving this provision. See footnote 2.
B–IX.	D–XII.	Innovative Control Technology	Yes	51.166(s)	EPA is approving this provision. See footnote 2.
B–X.	D–XIII.	Federal Class I Areas	Yes	51.166(p)	EPA is approving this section. The reference in D–XIII.C. to ''III.B. of Part B'' is at B–IV.B. in the current codified SIP. See footnote 2.

TABLE 1—Continued

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B–XI.	D–XIV.	Visibility	No	NA	EPA is not taking action on this section at this time. See footnote 1.
N/A	A–I.B.13.	CEMS definition	No	51.166(b)(43) 51.165(a)(1)(xxxiv)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	A–I.B.14.	CERMS definition	No	51.166(b)(46) 51.165(a)(1)(xxxiv)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	A–I.B.15.	CPMS definition	No	51.166(b)(45) 51.165(a)(1)(xxxiii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	A–I.B.33.	Pollution Prevention definition	No	51.166(b)(38) 51.165(a)(1)(xxvi)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	A–I.B.36.	PEMS definition	No	51.166(b)(44) 51.165(a)(1)(xxxii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–I.A.–I.A.1.	General Applicability (Introductory)	Yes	51.165(a)(2)(iii)(A) and (B).	EPA is approving the language in section I.A.1 only. See footnote 6.
N/A	D–I.A.2.–I–A.3	General Applicability (Continued)	No	51.166(a)(7) (iv)(a)and (b).	EPA is not taking action on these sections at this time. See footnote 1.
N/A	D–I.B	Applicability Tests	No	51.166(a)(7)(iv)(c), (d), and (f). 51.165(a)(2)(ii)(C), (D), and (F).	EPA is not taking action on this section at this time. The reference in D–I.B.5. to ''I.B.26. of Part A'' is at A–I.B.35.c. in the current codified SIP. See footnote 1.
N/A	D–I.B.3.	Emission tests at clean units (part of Applicability Tests)	No	51.166 (a)(7)(iv)(e) 51.165(a)(2)(ii)(E)	EPA is not taking action on this provision at this time. See footnote 1.
N/A	D–I.B.4. second sentence.	For example, for a project involves both an existing unit and a clean unit * * *. (part of Applicability Tests)	No	51.166(a)(7)(iv)(f) second sentence. 51.165(a)(2)(ii)(F) second sentence.	EPA is not taking action on this part of provision D–I.B.4. at this time. See footnote 1.
N/A	D–I.C.	For any major stationary source requesting, or operating under, a Plantwide Applicability Limitation * * *.	No	51.166 (a)(7)(v) 51.165(a)(2)(iii)	EPA is not taking action on this section at this time. See footnote 1,
N/A	D–I.D.	An owner or operator undertaking a Pollution Control Project * * *.	No	51.166 (a)(7)(vi) 51.165(a)(2)(iv)	EPA is not taking action on this provision at this time. See footnote 1.
N/A	D–II.A.2.	Actuals PAL Definition	No	51.166(w)(2)(i) 51.165(f)(2)(i)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.4.	Baseline Actual Emissions definition.	No	51.166(b)(47) 51.165(a)(1)(xxxv)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.7.	Begin Actual Construction definition.	No	51.166(b)(11) 51.165(a)(1)(xv)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.9.	Clean Coal Technology definition	No	51.166(b)(33) 51.165(a)(1)(xxiii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.10.	Clean Coal Technology Demonstration Project definition.	No	51.166(b)(34) 51.165(a)(1)(xxiv)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.11.	Clean Unit definition	No	51.166(b)(41) 51.165(a)(1)(xxix)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.13.	Construction definition	No	51.166(b)(8) 51.165(a)(1)(xxviii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.14.	Emissions Unit definition (for PSD/NSR purposes).	No	51.166(b)(7) 51.165(a)(1)(vii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.15.	Electric Utility Steam Generating Unit definition.	No	51.166(b)(30) 51.165(a)(1)(xx)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.17.	High Terrain definition	No	51.166(b)(25)	EPA is not taking action on this definition at this time. See footnote 1.

TABLE 1—Continued

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N/A	D–II.A.18.	Hydrocarbon Combustion Flare definition.	No	51.166(b)(31)(iv) 51.165(a)(1)(xv)(D)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.20.	Low Terrain definition	No	51.166(b)(26)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.22.	Major Emissions Unit definition	No	51.166(w)(2)(iv) 51.165(f)(2)(iv)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.28.	Nonattainment New Source Review definition.	No	51.165(a)(1)(xxx)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.29.	PAL Effective Date definition	No	51.166(w)(2)(vi) 51.165(f)(2)(vi)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.30.	PAL Effective Period definition	No	51.166(w)(2)(vii) 51.165(f)(2)(vii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.31.	PAL Major Modification definition	No	51.166(w)(2)(viii) 51.165(f)(2)(viii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.32.	PAL Permit definition	No	51.166(w)(2)(ix) 51.165(f)(2)(ix)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.33.	PAL Pollutant definition	No	51.166(w)(2)(x) 51.165(f)(2)(x)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.34.	Plantwide Applicability Limitation (PAL) definition.	No	51.166(w)(2)(v) 51.165(f)(2)(v)	EPA is not taking action on this definition at this time. See footnote 1.
NA	D–II.A.35.	Pollution Control Project definition	No	51.166(b)(31) 51.165(a)(1)(xxv)	EPA is not taking action on this definition at this time.
N/A	D–II.A.36.	Prevention of Significant Deterioration Permit definition.	No	51.166(b)(42) 51.165(a)(1)(xli)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.37.	Project definition	No	51.166(b)(51) 51.165(a)(1)(xxxix)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.38.	Projected Actual Emissions definition.	No	51.166(b)(40) 51.165(a)(1)(xxviii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.39.	Reactivation of Very Clean Coal-Fired EUSGU definition.	No	51.166(b)(37)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.40. (except II.A.40.c).	Regulated NSR Pollutant definition.	Yes	51.166(b)(49) 51.165(a)(1)(xxxvii)	EPA is approving this definition. See footnote 6.
N/A	D–II.A.41.	Replacement Unit definition	No	51.166(b)(32) 51.165(a)(1)(xxi)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.42.	Repowering definition	No	51.166(b)(36)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.45.	Significant Emissions Increase definition.	Yes	51.166(b)(39) 51.165(a)(1)(xxvii)	EPA is approving this definition. See footnote 6.
N/A	D–II.A.46.	Significant Emissions Unit definition.	No	51.166(w)(2)(xi) 51.165(f)(2)(xi)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.47.	Small Emissions Unit definition	No	51.166(w)(2)(iii) 51.165(a)(1)(iii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–II.A.48.	Temporary Clean Coal Demonstration Project definition.	No	51.166(b)(35) 51.165(a)(1)(xxii)	EPA is not taking action on this definition at this time. See footnote 1.
N/A	D–XV.	Clean Units	No	51.166(t) and (u) 51.165(c) and (d)	EPA is not taking action on this section at this time. See footnote 1.
N/A	D–XVI.	Pollution Control Projects	No	51.166(v) 51.165(e)	EPA is not taking action on this section at this time. See footnote 1. EPA is not taking action on this section at this time. The references in XVII.N.1.g and XVII.N.2.d. of this section to "I.B.38. of Part A" are at A–I.B.53. in the current codified SIP.

TABLE 1—Continued

Provision location in Colorado's current SIP Reg 3 (NA = not in current Colorado SIP)	Provision location in Colorado's 4/16/2004 Reg 3 revision	Provision description	EPA is incorporating all or part of revision or addition into the SIP [5]	Equivalent provision in 40 CFR 51.165 and 40 CFR 51.166	Comment (if applicable, see footnote)
					Colorado has revised D–XVII.I.2. (application deadline) to 12 months prior to expiration instead of 6 months. Colorado has revised XVII.N.1. (Semi-Annual Report) to require submission of QA/QC data as requested, not as part of the semi annual report specified in 51.166(w)(14)(i)(c).
N/A	D–XVII.	Plantwide Applicability Limitations	No	51.166(w) 51.165(f)	See footnote 1.

Footnote 1: We are not taking action on this provision with this rulemaking. Approval of the change to or addition of the provision is not a necessary prerequisite for our action on the August 1, 2007 submittal, or the provision was not proposed for approval in our December 7, 2005 notice. We will take final action on this provision in a subsequent action.

Footnote 2: We are approving this change of an existing Regulation No. 3 provision because the provision has only been renumbered, contains nonsubstantive changes to the provision that do not effect the meaning of the rule and/or has been modified to move a definition that has already been approved into the SIP to a specific rule section in which the definition applies. This renumbered provision and all subsections within this provision (unless otherwise noted) supersede and replace the prior numbered rule and subsections in Colorado's federally approved SIP.

Footnote 3: We are approving the renumbering of this existing provision. We are not taking action on the language in the provision that has been modified in the 2005 submissions. All language that has been added to the existing provision is italicized in the submission, and all language that has been deleted from the existing provision is underlined in the submission. We will address these additions and removals in subsequent actions.

Footnote 4: We are approving both the renumbering of the existing provision and the language in the provision that has been modified.

Footnote 5: We are approving the renumbering of the existing provision, and the modification of the provision to the extent that the term ''regulated NSR pollutant'' replaces the phrase ''air pollutant regulated under the Federal Act'' (or equivalent phrase), but not any other modification of the provision.

Footnote 6: We are approving the new provision.

Footnote 7: Colorado has marked this part of the definition of Major Modification as underlined, meaning that the State intends it will only be effective until EPA approves the NSR Reform revisions for incorporation into the SIP. Colorado has since clarified that they intended that this provision remain as part of the definition of Major Modification as it applies to PSD sources located in attainment areas only, consistent with 40 CFR 51.166(b)(2)(j). If Colorado revises Regulation No. 3 to indicate this clarification prior to EPA taking final action, EPA proposes to approve this addition to the definition of Major Modification into the SIP.

EPA is also approving portions of the Regulation No. 3 revisions submitted to EPA by the State on August 1, 2007 that update the State's PSD program to treat nitrogen oxides as an ozone precursor in accordance with the Phase 2 implementation rule for the 1997 8-hour ozone NAAQS (70 FR 71612, November 29, 2005). Other portions of the revisions submitted August 1, 2007 will be acted upon separately. The portions of the August 1, 2007 submission we are approving with this action are set out in the table below. As discussed above, this approval allows us to also finalize our concurrently proposed approval of the Colorado Interstate Transport SIP with respect to requirement (3) of section 110(a)(2)(D)(i) for the 1997 ozone NAAQS.

TABLE 2

Provision location in Colorado's 8/1/07 Reg 3 submission	Provision location in Colorado's 7/11/05 and 10/25/05 submission	Description of provision—language adopted for the 8/1/07 submission to conform to the Phase II Ozone implementation rule is italicized.	Corresponding provision in 40 CFR 51.166
D–II.A.22.a	D–II.A.23.a	Significant emissions increase or net emissions increase (at a major source) that is significant for VOCs or NO_X is significant for ozone.	51.166(b)(2)(ii)
D–II.A.24.d	D–II.A.25.d	Major source that is major for VOCs or NO_X is considered major for ozone.	51.166(b)(1)(ii)
D–II.A.38.c	D–II.A.40.c	(E.G. volatile organic compounds and oxides of nitrogen are precursors for ozone).	51.166(b)(49)(i)
D–II.A.42.a	D–II.A.44.a	Ozone: 40 tons per year of volatile organic compounds or NO_X.	51.166(b)(23)(i)

The discrepancy in the numbering of the provisions is the result of removal of provisions in other SIP revisions submitted between the 2005 and 2007 submissions. In this action, EPA is treating the 2007 submission as revising the provisions as numbered in the 2005 submission. When EPA acts on the intervening submissions that changed the numbering, the discrepancy will be resolved.

V. Statutory and Executive Order Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable

[5] When footnote 3 appears in the ''comment'' column for a provision which EPA is approving, we are only incorporating the language in that provision that was previously approved into the SIP and subsequently renumbered for the July 11, 2005 and October 25, 2005 submissions. The modified language for any such provision, which is italicized for additions and underlined for removals in the submissions, is not being addressed in this action and will be addressed in a future action. Similarly, when footnote 5 appears, we are only incorporating the language in that provision that was previously approved into the SIP and subsequently renumbered for the July 11, 2005 and October 25, 2005 submissions, and the modification to the extent that the term ''regulated NSR pollutant'' replaces the phrase ''air pollutant regulated under the Federal Act'' (or equivalent phrase), and not any other modified language.

Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 9, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 31, 2011.

Carol Rushin,

Acting Regional Administrator, Region 8.

Note: This document was received at the Office of the Federal Register on January 3, 2012.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G–Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(120) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(120) The State of Colorado submitted revisions on October 25, 2005 and August 1, 2007 to Colorado's 5 CCR 1001–5 Regulation Number 3, Part D. The October 25, 2005 submittal included a renumbering of Regulation Number 3. The incorporation by reference in paragraph (c)(120)(i)(A) on this section reflects the renumbered sections as of the October 25, 2005 submittal. Sections were removed from Part D between the October 25, 2005 and August 1, 2007 submittal. The incorporation by reference in paragraph (c)(120)(i)(B) of this section reflects the numbering of the sections as of the August 1, 2007 submittal.

(i) Incorporation by reference.

(A) 5 CCR 1001–5, Regulation 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part D, *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration,* adopted April 16, 2004 and effective June 30, 2004:

(*1*) Section I, *Applicability,* Sections I.A., *General Applicability;* I.A.1;

(*2*) Section II, *Definitions,*

(*i*) II.A;

(*ii*) II.A.1, *Actual Emissions;* II.A.1.a (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.1.b; II.A.1.c; II.A.1.e;

(*iii*) II.A.3, *Air Quality Related Value;*

(*iv*) II.A.5, *Baseline Area;*

(*v*) II.A.6, *Baseline Concentration;*

(*vi*) II.A.8, *Best Available Control Technology (BACT) (*the language that appears in plain or underlined text but not language that appears as italicized text, with the following exception—EPA is incorporating italicized text and is not incorporating underlined text when the combined effect of that action is to replace the phrase ''air pollutant regulated under the Federal Act'' (or an equivalent phrase) with the term ''regulated NSR pollutant'');

(*vii*) II.A.12, *Complete;*

(*viii*) II.A.16, *Federal Land Manager (FLM);*

(*ix*) II.A.19, *Innovative Control Technology;*

(*x*) II.A.21, *Lowest Achievable Emission Rate (LAER);* II.A.21.a; II.A.21.b (only the language that appears in plain or underlined text and not the language that appears as italicized text);

(*xi*) II.A.23, *Major Modification* (the language that appears in plain or underlined text but not language that appears as italicized text, with the following exception—EPA is incorporating italicized text and is not incorporating underlined text when the combined effect of that action is to replace the phrase ''air pollutant regulated under the Federal Act'' (or an equivalent phrase) with the term ''regulated NSR pollutant''); II.A.23.b; II.A.23.c; II.A.23.d; II.A.23.d(i); II.A.23.d(ii); II.A.23.d(iv); II.A.23.d.(v);

II.A.23.d.(vi); II.A.23.d.(vii); II.A.23.d.(ix); II.A.23.f;

(*xii*) II.A.24, *Major Source Baseline Date;*

(*xiii*) II.A.25, *Major Stationary Source;* II.A.25.a; II.A.25.c; II.A.25.e; II.A.25.f;

(*xiv*) II.A.26, *Minor Source Baseline Date;*

(*xv*) II.A.27, *Net Emissions Increase;* II.A.27.a; (the language that appears in plain or underlined text and the addition of the italicized phrase ''With respect to any regulated NSR pollutant emitted by any major stationary source''); II.A.27.a.(i) (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.a.(ii) (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.b (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.c; II.A.27.c.(i); II.A.27.c(ii); II.A.27.c(iii); II.A.27.d; II.A.27.e; II.A.27.f; II.A.27.g; II.A.27.g.(i); II.A.27.g.(ii); II.A.27.g.(iii) (only the language that appears in plain or underlined text and not the language that appears as italicized text); II.A.27.g.(iv); II.A.27.h; II.A.27.j; II.A.27.k, *Creditable Decreases for Fuel Switching;*

(*xvi*) II.A.40, *Regulated NSR Pollutant;* II.A.40.a; II.A.40.b; II.A.40.d; II.A.40.e;

(*xvii*) II.A.43, *Secondary Emissions* (only the language that appears in plain or underlined text and not the language that appears as italicized text);

(*xviii*) II.A.44, *Significant;* II.A.44.b; II.A.44.c;

(*xix*) II.A.45, *Significant Emissions Increase;*

(*3*) Section III, *Permit Review Procedures;*

(*4*) Section IV, *Public Comment Requirements;*

(*5*) Section V, *Requirements Applicable to Nonattainment Areas,* Sections V.A, *Major Stationary Sources;* V.A.1; V.A.2; V.A.3; V.A.3.d; V.A.4; V.A.5; V.A.6; V.A.7, *Applicability of Certain Nonattainment Area Requirements;* V.A.7.a; V.A.7.b; V.A.8, *Exemptions from certain nonattainment area requirements;*

(*6*) Section VI, *Requirements applicable to attainment and unclassifiable areas and pollutants implemented under section 110 of the Federal Act (Prevention of Significant Deterioration Program),* Sections VI.A, *Major Stationary Sources and Major Modifications;* VI.A.1, *Control Technology Review;* VI.A.1.a; VI.A.1.b; VI.A.1.c (only the language that appears in plain or underlined text and not the language that appears as italicized text); VI.A.2, *Source Impact Analysis;* VI.A.3, *Pre-construction Monitoring and Analysis;* VI.A.4, *Post-Construction Monitoring;* VI.A.5, *Operation of Monitoring Stations;* VI.A.6, *Additional Impact Analysis* (only the language that appears in plain or underlined text and not the language that appears as italicized text); VI.B, *Applicability of Certain PSD Requirements;* VI.B.1 through VI.B.4; VI.B.7; VI.C, *Notice to the U.S. EPA;* VI.D, *Major Stationary Sources in attainment areas affecting nonattainment areas;*

(*7*) Section VII, *Negligibly Reactive Volatile Organic Compounds (NRVOCs);*

(*8*) Section VIII, *Area Classifications,* Sections VIII.A; VIII.C; VIII.D;

(*9*) Section IX, *Redesignation;*

(*10*) Section X, *Air Quality Limitations,* Sections X.A, *Ambient Air Increments;* X.A.1, X.A.2; X.A.3; X.A.4, *Periodic Review;*

(*11*) Section XI, *Exclusions From Increment Consumption;*

(*12*) Section XII, *Innovative Control Technology;*

(*13*) Section XIII, *Federal Class I Areas;* adopted April 16, 2004 and effective June 30, 2004.

(B) Regulation 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements,* Part D, *Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration,* Section II, *Definitions;* Sections II.A; II.A.22.a; II.A.24.d; II.A.38.c; II.A.42.a; adopted August 17, 2006 and effective October 30, 2006.

■ 3. Section 52.352 is revised to read as follows:

§ 52.352 Interstate transport.

(a) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport regarding the 1997 8-Hour Ozone Standard for the ''significant contribution,'' the ''interference with maintenance'' requirements, and the addition of ''interference with visibility protection'' requirements regarding the 1997 8-Hour Ozone and $PM_{2.5}$ Standards, submitted by the Governor's designee on June 18, 2009 and March 31, 2010.

(b) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding the 1997 8-Hour Ozone and 1997 $PM_{2.5}$ Standards for the ''interference with prevention of significant deterioration'' requirement, and the addition of the ''significant contribution'' and ''interference with maintenance'' requirements regarding the 1997 $PM_{2.5}$ Standards, submitted by the Governor's designee on March 31, 2010.

[FR Doc. 2012–70 Filed 1–6–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 10–191; Report No. 2939]

Internet-Based Telecommunications Relay Service Numbering

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding concerning rules that govern access to toll-free numbers by users of Internet-based Telecommunications Relay Services (iTRS).

DATES: Oppositions to the Petition must be filed by January 24, 2012. Replies to an opposition must be filed February 3, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Heather Hendrickson, Wireline Competition Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 2939, released December 23, 2011. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–(800) 378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Internet-Based Telecommunications Relay Service Numbering, published at 76 FR 59551, September 27, 2011, in WC Docket No. 10–191, and published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2012–72 Filed 1–6–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 77, No. 5
Monday, January 9, 2012

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 HOMELAND SECURITY

8 CFR Part 212

RIN 1615–ZB10

Provisional Waivers of Inadmissibility for Certain Immediate Relatives of U.S. Citizens

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of intent.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) intends to change its current process for filing and adjudication of certain applications for waivers of inadmissibility filed in connection with an immediate relative immigrant visa application. Specifically, USCIS is considering regulatory changes that will allow certain immediate relatives of U.S. citizens to request provisional waivers under section 212(a)(9)(B)(v) of the Immigration and Nationality Act of 1952, as amended (INA or Act), 8 U.S.C. 1182(a)(9)(B)(v), prior to departing the United States for consular processing of their immigrant visa applications. An alien would be able to obtain such a waiver only if a Petition for Alien Relative, Form I–130, is filed by a U.S. citizen on his or her behalf and that petition has been approved, thereby classifying the alien as an ''immediate relative'' for purposes of the immigration laws, and he or she demonstrates that the denial of the waiver would result in extreme hardship to the alien's U.S. citizen spouse or parent ''qualifying relative.'' The qualifying relative for purposes of the waiver is not necessarily the immediate relative who filed the immigrant visa petition on the alien relative's behalf.

FOR FURTHER INFORMATION CONTACT: Roselyn Brown-Frei, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2099, telephone (202) 272–1470 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The proposed process is intended to reduce the time that U.S. citizens are separated from immediate relatives who are required to remain outside the United States for immigrant visa application processing and during the adjudication of waivers of inadmissibility. Through this change, USCIS does not intend to modify the standard for assessing eligibility for these waivers, including whether the denial of the waiver would result in extreme hardship to a U.S. citizen spouse or parent (''qualifying relative''). For purposes of the waiver under section 212(a)(9)(B)(v) of the Act, a ''qualifying relative'' is a U.S. citizen spouse or parent or a lawful permanent resident spouse or parent who would suffer extreme hardship if their relative were not allowed to immigrate. For purposes of this provisional waiver program, DHS intends to limit who may participate in this program to immediate relatives who can demonstrate extreme hardship to a U.S. citizen spouse or parent. Even if they obtain a provisional waiver, eligible aliens who are required to obtain a visa through consular processing would still be required to depart from the United States to apply for an immigrant visa. The purpose of the new process is to reduce the time that U.S. families remain separated while their relative proceeds through the immigrant visa process.

Certain grounds of inadmissibility can bar aliens from being admitted to the United States or obtaining an immigrant visa, preventing U.S. citizens from reuniting with their immediate relatives. However, the Secretary of Homeland Security, through USCIS, may waive some of those grounds. An alien who is subject to one or more grounds of inadmissibility must obtain a waiver, if available, from USCIS before he or she may be issued an immigrant visa by a Department of State consular officer at a U.S. embassy or consulate overseas.

The bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the INA, 8 U.S.C. 1182(a)(9)(B)(i)(I) and (II), based on accrual of unlawful presence in the United States, comprise one such ground. Typically, under current processes, aliens who are immediate relatives of U.S. citizens applying for immigrant visas at Department of State consular posts must apply for waivers of unlawful presence while outside the United States after a finding of inadmissibility is made by a Department of State consular officer in conjunction with their immigrant visa applications. As a result, U.S. citizen petitioners are often separated for long periods of time from their immediate relatives who are applying for immigrant visas and have accrued a certain period of unlawful presence in the United States. This revised process, which eliminates the time-consuming interchange between the Department of State and USCIS, would significantly reduce the amount of time that American families will be separated from their immediate relatives. USCIS also believes that efficiencies can be gained through this revised process for both the U.S. Government and most applicants.

USCIS intends to limit consideration for the provisional waiver to aliens who qualify for classification as immediate relatives of U.S. citizens, who have a U.S. citizen spouse or parent who would suffer extreme hardship if the waiver were denied, and for whom the sole basis for inadmissibility is unlawful presence in the United States of more than 180 days. USCIS would grant a provisional waiver if the alien meets the eligibility requirements described in this Notice, including demonstrating that the applicant's qualifying U.S. citizen spouse or parent would suffer extreme hardship and that the applicant warrants a favorable exercise of discretion. The provisional waiver would be granted before the alien leaves the United States to attend his or her immigrant visa interview with a consular officer. The provisional waiver, however, would not become effective unless and until the alien departs from the United States. If the alien is otherwise eligible for the immigrant visa, the consular officer may then approve the issuance of the visa so that the alien may proceed to immigrate to the United States for permanent residence.

This notice of intent generally describes the proposal that USCIS is considering. USCIS will further develop, and ultimately finalize, this proposal through the rulemaking process. This effort is consistent with

Executive Order 13563's call for agencies to ''consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Do not send an application requesting a provisional waiver under the procedures under consideration in this notice. Any application requesting this new process will be rejected, and the application package returned to the applicant, including any fees, until a final rule is issued and the change becomes effective.

B. Authority

The Homeland Security Act of 2002, Public Law 107–296, section 102, 116 Stat. 2135, 6 U.S.C. 112, and section 103 of the INA, 8 U.S.C. 1103, charge the Secretary of Homeland Security with administration and enforcement of the immigration and naturalization laws. The Secretary would effectuate these proposed changes under the broad authority to administer the Department of Homeland Security and the authorities provided under the Homeland Security Act of 2002, the immigration and nationality laws, and other delegated authority.

C. Grounds of Inadmissibility

U.S. immigration laws provide mechanisms for U.S. citizens to petition for certain family members for admission to the United States for purposes of family reunification. At the same time, however, the immigration laws prescribe acts, conditions, and conduct that bar aliens, including immediate relatives of U.S. citizens, from being admitted to the United States or obtaining an immigrant visa. Such acts, conditions, and conduct include certain criminal offenses, public health concerns, fraud, misrepresentation, failure to possess proper documents, accrual of more than 180 days of unlawful presence in the United States, and terrorism. The grounds of inadmissibility are set forth in section 212(a) of the INA, 8 U.S.C. 1182(a).

The Secretary of Homeland Security has the discretion to waive certain inadmissibility grounds, upon the filing of a request by an alien who meets the relevant statutory requirements. If the Secretary, through USCIS, grants such a waiver, the waived ground will no longer bar the alien's admission, readmission, or immigrant visa eligibility based on that specific ground of inadmissibility.

One of the inadmissibility grounds is described in section 212(a)(9)(B)(i) of the Act, 8 U.S.C. 1182(a)(9)(B)(i). Under part (I) of this provision, an alien who was unlawfully present in the United States for more than 180 days but less than one year, and who then departs voluntarily from the United States before the commencement of removal proceedings, will be inadmissible for three years from the date of departure. Under part (II) of the same provision, an alien who was unlawfully present for one year or more and then departs before, during, or after removal proceedings, will be inadmissible for ten years from the date of the departure.

The three- and ten-year unlawful presence bars do not take effect unless and until an alien departs from the United States. By statute, aliens are not considered to be accruing unlawful presence for purposes of section 212(a)(9)(B)(i) if they fall into certain categories. For example, aliens do not accrue unlawful presence while they are under 18 years of age. *See* INA section 212(a)(9)(B)(iii)(I), 8 U.S.C. 1182(a)(9)(B)(i)(iii)(I). Similarly, individuals with pending asylum claims generally are not considered to be accruing unlawful presence while their applications are pending. *See* INA section 212(a)(9)(B)(iii)(II), 8 U.S.C. 1182(a)(9)(B)(i)(iii)(II). Battered women and children and victims of a severe form of trafficking in persons are not subject to the section 212(a)(9)(B)(i) ground of inadmissibility at all if they demonstrate that there was a substantial connection between their victimization and their unlawful presence. *See* INA 212(a)(9)(B)(iii)(IV)–(V), 8 U.S.C. 1182(a)(9)(B)(i)(iii)(IV)–(V). Aliens who are subject to the unlawful presence bars must apply for and be granted a waiver in order to receive an immigrant visa and be admitted to the United States.

The Secretary of Homeland Security has the discretion to waive the three- and ten-year unlawful presence bars if the alien is seeking admission as an immigrant and if the alien demonstrates that the denial of his or her admission to the United States would cause ''extreme hardship'' to the alien's qualifying relative. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). The qualifying relative for purposes of the waiver is not necessarily the relative who filed the immigrant visa petition on the alien relative's behalf. For example, an alien applicant's U.S. citizen spouse may have filed the immigrant visa petition on the applicant's behalf, but the applicant's unlawful presence waiver application may be based on extreme hardship to the applicant's U.S. citizen parent. Because the granting of a waiver is discretionary, the alien also must establish that he or she merits a favorable exercise of discretion.

D. Current Process and Problems

An alien who must apply for permanent residence through consular immigrant visa processing outside the United States must appear for an interview with a Department of State consular officer abroad. Currently, if the consular officer determines that the alien is subject to the three- or ten-year bar, the consular officer advises the alien that he or she is eligible to apply for a section 212(a)(9)(B)(v) waiver by filing a Form I–601, Application for Waiver of Grounds of Inadmissibility, with USCIS. Under current rules, an individual is not permitted to apply for the section 212(a)(9)(B)(v) waiver before the consular officer has made the inadmissibility determination.

Once the Form I–601 is filed, in most cases, the file is transferred from the Department of State to USCIS. USCIS adjudicates that waiver request while the alien remains outside the United States and awaits a decision. If USCIS approves the waiver, USCIS notifies the Department of State, and the Department of State may then issue the immigrant visa if the applicant is otherwise eligible. If the waiver is denied, the alien may appeal the decision to the USCIS Administrative Appeals Office and, if the denial is upheld, the alien must remain outside the United States for three or ten years before being able to reapply for an immigrant visa. However, a denial does not preclude the alien from filing another Form I–601 in the future.

The three- and ten-year unlawful presence bars under section 212(a)(9)(B)(i)(I) and (II) of the Act do not apply unless and until the applicant departs from the United States. At the same time, many aliens who would trigger these bars if they depart from the United States are, for other reasons, statutorily ineligible to apply for adjustment of status to lawful permanent residence while remaining in the United States. Consequently, they must depart to regularize their immigration status by applying for their immigrant visas at a U.S. embassy or consulate abroad. The action required to regularize the status of an alien, departure from the United States, therefore is the very action that triggers the section 212(a)(9)(B)(i) inadmissibility that bars that alien from obtaining the immigrant visa.

II. Proposed Waiver Process

A. Proposed Process

The proposed change would create a more streamlined and efficient process for waiver applicants whose sole inadmissibility ground is unlawful presence, while simultaneously minimizing family separation. If the waiver determination, with respect to unlawful presence, were made in advance of the immigrant visa interview and the applicant otherwise were eligible for the immigrant visa, the consular officer could simply issue the immigrant visa at the time of the visa interview. The new process thus will reduce the movement of the case back and forth between the Department of State and USCIS, which significantly prolongs the overall process and increases the time that U.S. citizens are separated from their immediate family members. Additionally, the new process would reduce U.S. Government costs associated with the movement of cases, and provide a more efficient visa process overall.

B. Affected Visa Categories

USCIS intends to limit this process change to aliens who are immediate relatives of U.S. citizens, as defined in section 201(b)(2)(A)(i) of the Act, 8 U.S.C. 1151(b)(2)(A)(i), who must depart from the United States to obtain immigrant visas, and whose U.S. citizen spouse or parent would suffer extreme hardship if the applicant were denied admission to the United States. The term ''immediate relative'' means the spouse, parent or child (unmarried and under 21 years old) of a U.S. citizen, except that, in the case of a parent, the U.S. citizen son or daughter petitioning for an immigrant visa must be at least 21 years old. Certain self-petitioners (*i.e.,* widows/widowers of U.S. citizen and their minor unmarried children) may also be considered immediate relatives. *See* INA 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i). Individuals applying for a waiver must also establish that the grant of the provisional waiver is warranted as a matter of discretion.

Because the focus on family unification of U.S. citizens and their immediate relatives is consistent with Congress' prioritization in the immigration laws, USCIS has identified immediate relatives of U.S. citizens as the class of aliens to consider for this procedural change. In addition, Congress did not set an annual limitation for the number of immediate relatives of U.S. citizens admitted to the United States. Therefore, these relatives always have an immigrant visa immediately available, and the visa thus can be processed immediately upon approval.

C. Ground of Inadmissibility Considered for Provisional Waiver

USCIS intends to further limit this procedural change to waivers filed by immediate relatives of U.S. citizens whose *only* ground of inadmissibility is the three- or ten-year unlawful presence bar under section 212(a)(9)(B)(i)(I) or (II) of the Act, 8 U.S.C. 1182(a)(9)(B)(i)(I) or (II). Aliens who require waivers for one or more additional grounds of inadmissibility, such as fraud or willful misrepresentation (section 212(i) waiver) or certain criminal offenses (section 212(h) waiver), in conjunction with their immigrant visa applications must continue to file a Form I–601 while outside of the United States in accordance with the existing process.

To qualify for the provisional waiver process, an applicant must establish not only that he or she is the immediate relative of a U.S. citizen, but also that denial of the waiver would result in extreme hardship to a qualifying relative. The qualifying relative must be a U.S. citizen spouse or parent but does not need to be the U.S. citizen petitioner. Only extreme hardship from the denial of a waiver to a qualifying U.S. citizen relative makes an alien eligible for the provisional waiver process; extreme hardship to the alien himself or herself as a result of denial does not make the alien eligible. An alien whose waiver application is based on extreme hardship to a lawful permanent resident spouse or parent must continue to apply for the waiver from outside the United States in accordance with existing procedures. Eligible aliens, furthermore, must be the beneficiaries of petitions classifying them as immediate relatives of U.S. citizens, and thus have visas immediately available. Because the granting of a waiver is discretionary, eligible aliens also must establish that they merit a favorable exercise of discretion. The standard for assessing whether denial of the waiver would result in extreme hardship to the U.S. citizen spouse or parent of such aliens will remain unchanged.

D. Adjudication and Decisions

After filing the Form I–601 with USCIS, DHS envisions that an alien seeking a provisional waiver would be required to undergo biometrics collection. USCIS would deny the application for a provisional waiver if other possible grounds of inadmissibility are found or arise during adjudication.

If the application is approved, USCIS would notify the Department of State and the alien of the provisional approval. In all instances, a Department of State consular officer would make the formal inadmissibility finding during or following the immigrant visa interview abroad, and if no other grounds of inadmissibility arise, the provisional waiver under section 212(a)(9)(B)(v) of the Act granted by USCIS would facilitate immigrant visa issuance. If, however, the consular officer finds during adjudication of the immigrant visa application that the individual is subject to another ground of inadmissibility that can be waived, the alien would need to file another waiver application with USCIS.

This process would not alter the requirement that an alien depart from the United States to apply for an immigrant visa. An alien who receives a provisional waiver under section 212(a)(9)(B)(v) of the Act for the three- or ten-year bar under section 212(a)(9)(B)(i)(I) or (II) of the Act would not gain the benefit of such waiver unless he or she departs from the United States. The departure from the United States would have to take place to activate the provisional waiver under section 212(a)(9)(B)(v) of the Act.

E. Excluded Visa Categories

Aliens who would not be eligible for this provisional waiver adjudication process and aliens who are denied provisional approval of their waiver requests would continue to follow current agency processes for filing and adjudication of waiver requests. Aliens who fall under any other family- or employment-based or other visa category or whose section 212(a)(9)(B)(v) waiver eligibility would be based on extreme hardship to a lawful permanent resident alien relative would not be considered for provisional waivers. Aliens who are subject to other grounds of inadmissibility or removal also would not be considered for provisional waivers. Further, aliens with waiver applications under section 212(a)(9)(B)(v) of the Act currently pending in either administrative or judicial proceedings would not qualify for this new process.

III. Conclusion

This document outlines the key elements of USCIS's proposed change to its current process for filing and adjudication of waivers of inadmissibility for unlawful presence for immediate relative of U.S. citizens. The focus on family unification of U.S. citizens and their immediate relatives is consistent with Congress's prioritization

in the immigration laws; the new process will reduce the movement of the case back and forth between the Department of State and USCIS, which significantly prolongs the overall process and increases the time that U.S. citizens are separated from their immediate family members. The proposed change would affect only when and where certain aliens can apply for waivers of the unlawful presence grounds of inadmissibility; it would not change the extreme hardship standard for evaluating eligibility for the waiver nor would it change whether aliens subject to these grounds of inadmissibility must depart the U.S. to apply for their immigrant visas. USCIS plans to effectuate this proposal through the regulatory process. USCIS will issue a proposed rulemaking that will explain the proposal in further detail and that will invite comment from all interested parties. **Note:** Do not send an application requesting a provisional waiver under the procedures under consideration in this notice. Any application requesting this new process will be rejected and the application package returned to the applicant, including any fees, until a final rule is issued and the change becomes effective.

Janet Napolitano,

Secretary of Homeland Security.

[FR Doc. 2012–140 Filed 1–6–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0945; Directorate Identifier 2011–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products identified above. This proposed AD was prompted by a report of a quality escape of about 8,000 2nd stage low pressure turbine (LPT2) rotor blades, manufactured by Honeywell Chihuahua Manufacturing Operation since 2009. This proposed AD would require removing and inspecting certain LPT2 rotor blades. During LPT rotor acceleration, these blades may contact and damage the 3rd stage LPT (LPT3) nozzle seal carrier, which may subsequently fatigue and contact the adjacent rotor and damage the rotor. Also, these blades could deform the blade retainers, which could lead to blade movement that may cause rotor damage. We are proposing this AD to correct an unsafe condition caused by these blades installed on these engines.

DATES: We must receive comments on this proposed AD by March 9, 2012.

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

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

For service information identified in this proposed AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; web site: *http://portal.honeywell.com;* or call Honeywell toll free at phone: (800) 601–3099 (U.S./Canada) or (602) 365–3099 (International Direct). You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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: Joseph Costa, Aerospace Engineer, Los Angles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: (562) 627–5246; fax: (562) 627–5210; email: *joseph.costa@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–2011–0945; Directorate Identifier 2011–NE–18–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

During a routine replacement of LPT2 rotor blades, part numbers (P/Ns) 3075424–2 and 3075424–3, the new LPT2 rotor blades, P/Ns 3075424–2 and 3075424–3, were seen to have aft discouragers that were approximately 0.020 inch (0.51 mm) longer than the existing LPT2 rotor blades, P/Ns 3075424–2 and 3075424–3. Further investigation revealed that the aft discouragers of the new LPT2 rotor blades, P/Ns 3075424–2 and 3075424–3, did not meet the type design requirements. That investigation also found that only LPT2 rotor blades P/Ns 3075424–2 and 3075424–3, manufactured from specific machining lots, are affected. P/N 3075424–2 suspect lots were manufactured between March 2009 and September 2010, inclusive. P/N 3075424–3 suspect lots were manufactured between July 2010 and September 2010, inclusive.

During LPT rotor acceleration, these blades may contact and damage the LPT3 nozzle seal carrier, which may subsequently fatigue and contact the adjacent rotor and damage the rotor. Also, these blades could deform the blade retainers, which could lead to blade movement that may cause rotor damage.

We have not received any reports of engine in-flight shutdowns due to these blades being in service.

These blades may damage the rotor. This condition, if not corrected, could result in damage to these blades installed on these engines.

Relevant Service Information

Honeywell International Inc. Service Bulletin (SB) TFE731–72–5221, Revision 0, dated November 11, 2010 describes procedures for determining affected engine serial numbers (S/Ns) and machining lot of affected LPT2 rotor blades.

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 the same type design.

Proposed AD Requirements

This proposed AD would require removing and inspecting suspect LPT2 rotor blades:

- At the next major periodic inspection, not to exceed 3,000 hours time-since-new, or
- Five years after the effective date of this proposed AD, or
- When the LPT module is disassembled.

Costs of Compliance

We estimate that this proposed AD would affect 3,000 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per engine to perform the record review, and that the average labor rate is $85 per work-hour. For an estimated 500 engines with discrepant blades, blade rework cost was estimated at $2,380 per engine with a replacement parts cost about $1,100 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,430,100.

Authority for This Rulemaking

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

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

Regulatory Findings

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):

Honeywell International Inc. (Formerly Allied Signal Inc. and Garrett Turbine Engine Company): Docket No. FAA–2011–0945; Directorate Identifier 2011–NE–18–AD.

(a) Comments Due Date

We must receive comments by March 9, 2012.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Honeywell International Inc. TFE731–20R, –20AR, –20BR, –40, –40AR, –40R, –50R, and –60 turbofan engines.

(i) With an engine model number and serial number (S/N) listed in Table 4 of Honeywell Service Bulletin (SB) TFE731–72–5221, Revision 0, dated November 11, 2010, or

(ii) With 2nd stage low pressure turbine (LPT2) rotor assembly part numbers (P/Ns) 3060608–2, 3060608–3, or 3060608–5 that had any LPT2 rotor blades P/N 3075424–2 replaced between March 2009 and September 2010, inclusive, or that had any LPT2 rotor blades P/N 3075424–3 replaced between July 2010 and September 2010, inclusive.

(d) Unsafe Condition

This AD was prompted by a report of a quality escape of about 8,000 LPT2 rotor blades, manufactured by Honeywell Chihuahua Manufacturing Operation since 2009. During LPT rotor acceleration, these blades may contact and damage the 3rd stage LPT (LPT3) nozzle seal carrier that may subsequently fatigue and contact the adjacent rotor and damage the rotor. Also, these blades could deform the blade retainers, which could lead to blade movement that may cause rotor damage. We are issuing this AD to correct the unsafe condition caused by these blades installed on these engines.

(e) Compliance

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

(f) Remove LPT2 Rotor Blades

(1) At the next major periodic inspection, not to exceed 3,000 hours time-since-new, or within 5 years after the effective date of this AD, or at the next access, whichever occurs first, do the following using Section 3.0, Accomplishment Instructions, of Honeywell SB TFE731–72–5221, Revision 0, dated November 11, 2010:

(i) Remove any suspect LPT2 rotor blades from service.

(ii) Inspect suspect LPT2 rotor blades.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Definitions

For purposes of this AD, next access is defined as when the LPT module is disassembled.

(i) Related Information

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd. Lakewood, CA 90712–4137; phone: (562) 627–5246; fax: (562) 627–5210; email: *joseph.costa@faa.gov.*

(2) For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; Web site: *http://portal.honeywell.com;* or call Honeywell toll free at phone: (800) 601–3099 (U.S./Canada) or (602) 365–3099 (International Direct). You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7125.

Issued in Burlington, Massachusetts, on December 29, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–80 Filed 1–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 111104664–1798–01]

RIN 0648–BB61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fisheries of the Gulf of Mexico and South Atlantic; Revisions of Bycatch Reduction Device Testing Protocols

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

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Gulf FMP) and the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (South Atlantic FMP), this rule would certify two new bycatch reduction devices (BRDs) for use in the Gulf of Mexico (Gulf) and South Atlantic shrimp fisheries, and revise a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf. Both BRDs represent modifications to the Composite Panel BRD, which is provisionally certified through May 24, 2012. This rule would incorporate these BRDs to the list of allowable BRDs, and provide technical specifications for the construction and subsequent legal enforcement of these BRDs. Additionally, this rule would revise the shrimp effort reduction threshold for the Gulf shrimp fishery. The intended effect of this proposed rule is to improve bycatch reduction efforts in the Gulf and South Atlantic shrimp fisheries, provide greater flexibility to the industry, reduce the social and economic impacts to fishing communities, and meet the requirements of National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before February 8, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2011–0274, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.*
- *Mail:* Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* enter ''NOAA–NMFS–2011–0274'' in the keyword search, then select ''Send a Comment or Submission.'' NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: (727) 824–5305, fax: (727) 824–5308, email: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The shrimp fishery in the exclusive economic zone (EEZ) of the Gulf is managed under the Gulf FMP prepared by the Gulf of Mexico Fishery Management Council (Gulf Council), and the shrimp fishery in the EEZ of the South Atlantic is managed under the South Atlantic FMP prepared by the South Atlantic Fishery Management Council (South Atlantic Council). The Gulf and South Atlantic FMPs are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Management Measures Contained in This Proposed Rule

This rule would certify two new BRDs for use in the Gulf and South Atlantic shrimp fisheries, and revise a harvesting restriction for shrimp vessels fishing in Federal waters of the Gulf.

BRD Certifications

BRDs are modifications to trawl nets that limit the amount of non-targeted species caught during a fishing trip. Federal regulations require BRDs to be installed in shrimp trawls in nearly all southeastern shrimp fisheries conducted in Federal waters. The South Atlantic Council established this requirement in 1997 (April 16, 1997, 62 FR 18536). Similar requirements were established by the Gulf Council in 1998 for the western Gulf (April 14, 1998, 63 FR 18139), and in 2004 for the eastern Gulf (January 9, 2004, 69 FR 1538).

In 2008, NMFS published a final rule (February 13, 2008, 73 FR 8219) establishing a standardized criterion by which all BRDs are certified for use in the southeastern shrimp fisheries. To be certified for use in the fisheries, data collected under a standardized sampling procedure must demonstrate a BRD candidate reduces finfish biomass by at least 30 percent. To ensure the statistical certainty in regard to the sample mean value, under a Bayesian approach, the result must meet two probability statements:

1. ''There is a 50 percent probability the true reduction rate meets the bycatch reduction criterion,'' and
2. ''There is no more than a 10 percent probability the true reduction rate is more than 5 percent less than the bycatch reduction criterion.''

In addition, NMFS established a provisional certification status that applies to a BRD candidate not quite meeting the criteria for certification. A BRD provisional certification is effective for 2 years from the date of a publication in the **Federal Register** originally announcing the provisional certification. This time period is intended to allow additional wide-scale industry evaluation of the BRD candidate. The intent is to also further refine the design or application of the BRD candidate so it can eventually meet the certification criterion with greater certainty. To be provisionally certified, statistical analyses of the test results for a BRD candidate must demonstrate:

> There is at least a 50 percent probability the true reduction rate of the BRD candidate is no more than 5 percent less than the bycatch reduction criterion (*i.e.,* the BRD candidate demonstrates a best point estimate [sample mean] of 25 percent or greater for finfish bycatch reduction).

In 2008, NMFS published a final rule (February 13, 2008, 73 FR 8219) which provisionally certified the Composite Panel BRD for use in Federal waters throughout the Gulf and South Atlantic. The initial test data for this BRD indicated there is a 52 percent probability the true reduction rate of this BRD design is at least 25 percent.

The provisional certification of the Composite Panel BRD in the Gulf and South Atlantic, along with the

Expanded Mesh BRD in the Gulf, was extended in 2010 through May 24, 2012 (May 24, 2010, 75 FR 28760). No new data were available to indicate these two BRDs no longer met the provisional certification criterion. As of May 25, 2012, 2 years after the provisional certification expires, both provisionally certified BRDs will be automatically decertified, and not allowed for use in the shrimp fisheries. It should be noted that the Expanded Mesh BRD remains fully certified for use in the South Atlantic after May 25, 2012.

Since 2010, subsequent industry testing has occurred for various modifications to the Composite Panel BRD following standardized procedures outlined by NMFS and using NMFS-approved observers to collect the data. Subsequently, NMFS' Southeast Fisheries Science Center personnel conducted the statistical analyses of the data collected on two of these modified versions of the Composite Panel BRD. One version incorporates the addition of a square mesh panel [Square Mesh Panel (SMP) Composite Panel BRD]; the other version incorporates the addition of a cone fish deflector in the cod end of the trawl behind the BRD (Cone Fish Deflector Composite Panel BRD). Results indicated the SMP Composite Panel BRD reduces finfish biomass by 49.9 percent with a 95 percent confidence interval of 44.1 to 55.6 percent. A Bayesian analysis indicates a 100 percent probability that the reduction rate exceeds the target 30 percent finfish biomass reduction, and there is less than a 1 percent probability that the reduction rate is less than the minimum threshold of 25 percent. Results for the Cone Fish Deflector Composite Panel BRD indicate it reduces finfish biomass by 51.3 percent with a 95 percent confidence interval of 45.0 to 57.7 percent. A Bayesian analysis indicates a 100 percent probability that the reduction rate exceeds the target 30 percent finfish biomass reduction, and there is less than a 1 percent probability that the reduction rate is less than the minimum threshold of 25 percent.

BRDs may have different capabilities under different fishing conditions, and having a wider variety of BRDs for use in the fisheries would allow fishermen to choose the most effective BRD for the specific local fishing conditions.

Gulf Shrimp Trawl Effort Threshold

To end overfishing of Gulf red snapper by 2010, the 2005 Southeast Data, Assessment and Review (SEDAR 7) stock assessment results indicated the benchmark 2001–2003 level of red snapper bycatch mortality attributable to shrimp fishing needed to be reduced by 74 percent. Regulations implementing Amendment 14 to the Gulf FMP (January 29, 2008, 73 FR 5117) established, for 2008 through 2010, an effort reduction threshold 74 percent less than the effort during the benchmark years. This threshold applies to fishing effort expended by the shrimp fleet between the 10 fathom (18.3 m) and 30 fathom (54.9 m) depth contours from Mobile Bay, Alabama to the Texas-Mexico border. The depth stratum in this geographic range is known to have higher concentrations of juvenile red snapper.

In establishing this regulation, the Gulf Council recognized that recovery of the red snapper stock would provide direct benefits through incremental increases in allowable catch to those persons in the directed reef fish fishery who target red snapper. However, there are no similar direct benefits accruable to the shrimp fishery for its contribution towards rebuilding the red snapper stock. Therefore, to provide some recovery benefit for the Gulf shrimp fishery, the Gulf Council decided to relax the threshold for bycatch mortality reduction over time. In Amendment 14, the Gulf Council decided the effort threshold for the shrimp fishery should be relaxed to a 67 percent reduction from the 2001–2003 benchmark beginning in 2011, contingent upon updated stock assessments indicating the red snapper stock is rebuilding on schedule, and that overfishing ended by 2010.

An update assessment for red snapper was conducted in August 2009. The conclusions of the update assessment projected that overfishing likely ended in 2009, and the stock appeared to be increasing in accordance with the rebuilding plan targets. Based on these results, the Gulf Council submitted regulatory amendments to the Gulf reef fish FMP in 2010 and 2011 to increase the allowable catch for the directed reef fish fishery in each of those years, and NMFS implemented the allowable harvest increases through subsequent rulemaking (May 1, 2010, 75 FR 23186; April 29, 2011, 76 FR 23911).

Given that the Gulf red snapper stock appears to be rebuilding at the expected levels, and overfishing is projected to have ended, the directed reef fish fishery for red snapper is recognizing the benefits of stock recovery. This rulemaking to relax the shrimp effort threshold is intended to provide similar benefits to the shrimp fleet, as intended by the Gulf Council.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Gulf and South Atlantic FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

This proposed rule would not impose any new requirements on fishing entities in the southeastern shrimp fisheries. There are 2,144 unique vessels with permits to harvest shrimp in the EEZ of the Gulf and South Atlantic. These shrimp trawlers are already required to have a BRD installed in their shrimp nets and fishermen can continue to use their existing BRD. The proposed action would certify two new BRDs and simply allow fishermen, at their discretion, to use an alternative BRD in their shrimp nets. It would also provide greater flexibility in the construction and installation requirements for the Composite Panel BRD. Any decision to use alternative gear would be expected to occur only if its use would result in improved performance by the fishing vessel. As a result, any economic effects on any entity—large or small—are expected to be positive. Providing greater flexibility in the construction and installation requirements for the two new BRDs is also expected to lower costs and result in no additional adverse economic effects.

The proposed action to reduce the bycatch reduction threshold for juvenile red snapper in the Gulf shrimp fishery from 74 percent to 67 percent is also not expected to have direct economic effects on the 1,707 vessels with permits to harvest shrimp from the Gulf EEZ. If economic conditions in the fishery improve, decreasing the bycatch reduction threshold would allow vessels to increase their effort and thereby increase their gross revenue and potentially their profits. Further, the proposed reduction in bycatch threshold, and the resulting potential increase in fishing effort, is consistent with the red snapper rebuilding plan

and the most recent red snapper stock assessment.

Because this rule, if implemented, is not expected to have a significant direct economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 4, 2012.

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 proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, 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 § 622.34, the second sentence of paragraph (l)(1) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) * * *

(1) * * * The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 67-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP. * * *

* * * * *

3. In § 622.41, paragraph (g)(3)(ii) is removed and reserved and paragraphs (g)(3)(i)(G) and (H) are added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) * * *

(3) * * *

(i) * * *

(G) Cone Fish Deflector Composite Panel.

(H) Square Mesh Panel (SMP) Composite Panel.

* * * * *

4. In Appendix D to part 622, paragraph (G) is revised and paragraph (H) is added to read as follows:

Appendix D to Part 622B—Specifications for Certified BRDs

* * * * *

G. Cone Fish Deflector Composite Panel

1. *Description.* The Cone Fish Deflector Composite Panel BRD is a variation to the alternative funnel construction method of the Jones-Davis BRD, except the funnel is assembled by using depth-stretched and heat-set polyethylene webbing with square mesh panels on the inside instead of the flaps formed from the extension webbing. In addition, no hoops are used to hold the BRD open.

2. *Minimum Construction and Installation Requirements.* The Cone Fish Deflector Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1½-inch to 1¾-inch (3.8-cm to 4.5-cm) stretch mesh number with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24½-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1½-inch to 1⅝-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taught. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening.* There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1⅝-inch (4.1-cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 12 inches (30.5 cm) of the posterior edge of the funnel.

(e) *11-inch (27.9-cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16-inch (0.79-cm) or ⅜-inch (0.95-cm) cable 34 ½ inches (87.6 cm) in length. The ends must be joined by a 3-inch (7.6-cm) piece of ⅜-inch (0.95-cm) aluminum pipe pressed together with a ¼-inch (0.64-cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(f) *Installation of the cone in the extension.* The apex of the cone must be installed in the extension within 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine (or at least 4-mesh wide strip of number 21 or heavier webbing) 3 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine or webbing must be attached within 5 meshes of the aft edge of the funnel at the center of each of its sides. Two 12-inch (30.5-cm) pieces of number 60 (or heavier) twine must be attached to the top and bottom of the 11-inch (27.9-cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the extension webbing to keep the cone from inverting into the funnel.

H. Square Mesh Panel (SMP) Composite Panel

1. *Description.* The SMP is a panel of square mesh webbing placed in the top of the cod end to provide finfish escape openings.

2. *Minimum Construction and Installation Requirements.* The SMP Composite Panel BRD must contain all of the following:

(a) *Webbing extension.* The webbing extension must be constructed from a single rectangular piece of 1½-inch to 1¾-inch (3.8-cm to 4.5-cm) stretch mesh number with dimensions of 24½ meshes by 150 to 160 meshes. A tube is formed from the extension webbing piece by sewing the 24½-mesh sides together. The leading edge of the webbing extension must be attached no more than 4 meshes from the posterior edge of the TED grid.

(b) *Funnel.* The V-shaped funnel consists of two webbing panels attached to the extension along the leading edge of the panels. The top and bottom edges of the panels are sewn diagonally across the extension toward the center to form the funnel. The panels are 2-ply in design, each with an inner layer of 1½-inch to 1⅝-inch (3.8-cm to 4.1-cm) heat-set and depth-stretched polyethylene webbing and an outer layer constructed of no larger than 2-inch (5.1-cm) square mesh webbing (1-inch bar). The inner webbing layer must be rectangular in shape, 36 meshes on the leading edge by 20 meshes deep. The 36-mesh leading edges of the polyethylene webbing should be sewn evenly to 24 meshes of the extension webbing 1½ meshes from and parallel to the leading edge of the extension starting 12 meshes up from the bottom center on each side. Alternately sew 2 meshes of the polyethylene webbing to 1 mesh of the extension webbing then 1 mesh of the polyethylene webbing to 1 mesh of the extension webbing toward the top. The bottom 20-mesh edges of the polyethylene layers are sewn evenly to the extension webbing on a 2 bar 1 mesh angle toward the bottom back center forming a v-shape in the bottom of the extension webbing. The top 20-mesh edges of the polyethylene layers are sewn evenly along the bars of the extension webbing toward the top back center. The square mesh layers must be rectangular in shape and constructed of no larger than 2-inch (5.1-cm) webbing that is 18 inches (45.7 cm) in length on the leading edge. The depth of the square mesh layer must be no more than 2 inches (5.1 cm) less than the 20 mesh side of the inner polyethylene layer when stretched taut. The 18-inch (45.7-cm) leading edge of each square mesh layer must be sewn evenly to the 36-mesh leading edge of the polyethylene section and the sides are sewn evenly (in length) to the 20-mesh edges of the polyethylene webbing. This will form a v-shape funnel using the top of the extension webbing as the top of the funnel and the bottom of the extension webbing as the bottom of the funnel.

(c) *Cutting the escape opening.* There are two escape openings on each side of the funnel. The leading edge of the escape openings must be located on the same row of meshes in the extension webbing as the leading edge of the composite panels. The lower openings are formed by starting at the first attachment point of the composite panels and cutting 9 meshes in the extension webbing on an even row of meshes toward the top of the extension. Next, turn 90 degrees and cut 15 points on an even row toward the back of the extension webbing. At this point turn and cut 18 bars toward the bottom front of the extension webbing. Finish the escape opening by cutting 6 points toward the original starting point. The top escape openings start 5 meshes above and mirror the lower openings. Starting at the leading edge of the composite panel and 5 meshes above the lower escape opening, cut 9 meshes in the extension on an even row of meshes toward the top of the extension. Next, turn 90 degrees, and cut 6 points on an even row toward the back of the extension webbing. Then cut 18 bars toward the bottom back of the extension. To complete the escape opening, cut 15 points forward toward the original starting point. The area of each escape opening must total at least 212 in^2 (1,368 cm^2). The four escape openings must be double selvaged for strength.

(d) *SMP.* The SMP is constructed from a single piece of square mesh webbing with a minimum dimension of 5 squares wide and 12 squares in length with a minimum mesh size of 3-in (76-mm) stretched mesh. The maximum twine diameter of the square mesh is #96 twine (4 mm).

(e) *Cutting the SMP escape opening.* The escape opening is a rectangular hole cut in the top center of the cod end webbing. The posterior edge of the escape opening must be placed no farther forward that 8 ft (2.4 m) from the cod end drawstring (tie-off rings). The width of the escape opening, as measured across the cod end, must be four cod end meshes per square of the SMP (i.e. a cut of 20 cod end meshes for a SMP that is 5 meshes wide). The stretched mesh length of the escape opening must be equal to the total length of the SMP. No portion of the SMP escape opening may be covered with additional material or netting such as chaffing webbing which might impede or prevent fish escapement.

(f) *Installation of the SMP.* The SMP must be attached to the edge of the escape opening evenly around the perimeter of the escape opening cut with heavy twine.

[FR Doc. 2012–153 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 5

Monday, January 9, 2012

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings of the Committee on Adjudication of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of two public meetings of the Committee on Adjudication of the Assembly of the Administrative Conference of the United States. At these meetings, the committee will consider a draft report and a draft recommendation examining ways to improve procedures for immigration adjudication. Complete details regarding the committee meeting, the contours of the Immigration Adjudication Project, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About,'' then on ''The Committees,'' and then on ''Committee on Adjudication.''

Comments may be submitted by email to *Comments@acus.gov,* with ''Committee on Adjudication'' in the subject line, or by postal mail to ''Committee on Adjudication Comments'' at the address given below.

DATES: Wednesday, January 25 from 1:30 p.m. to 4:30 p.m.; and Wednesday, February 22 from 1:30 p.m. to 4:30 p.m.

ADDRESSES: The meetings will be held at 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Funmi E. Olorunnipa, Designated Federal Officer, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080.

SUPPLEMENTARY INFORMATION: The Committee on Adjudication will meet to discuss a draft report on the Immigration Adjudication Project. The report, prepared by Professor Lenni B. Benson (New York Law School) and Russell Wheeler (Brookings Institution), presents the findings of a study of potential improvements to the procedures for immigration adjudication. At its meetings, the Committee on Adjudication will also consider a draft recommendation based on the consultants' report.

Dated: January 4, 2012.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2012–119 Filed 1–6–12; 8:45 am]

BILLING CODE 6110–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0045]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau''), gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than February 8, 2012. The new system of records will be effective February 21, 2012 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0045, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB to administer and enforce Federal consumer financial protection law. The CFPB will maintain the records covered by this notice.

The new system of records described in this notice, CFPB.015—Ethics Program Records, will provide the CFPB with a single, agency-wide repository for questions submitted to the CFPB Ethics Office and requests for advice or clarification. The Ethics Program Records will allow the CFPB to manage and appropriately document the CFPB's compliance with government ethics program requirements. A description of the new system of records follows this Notice.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.015—Ethics Program Records'' is published in its entirety below.

Dated: January 4, 2011.

Claire Stapleton,

Chief Privacy Officer.

CFPB.015

SYSTEM NAME:

CFPB Ethics Program Records.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include prospective, current and former CFPB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system may contain, without limitation, the following information about an individual: Name; address; telephone number; ethics advice; outside activity approvals (*i.e.* activities outside of, or not related to, a CFPB employee's current official work); ethics agreements; information in support of Public Financial Disclosure Reports and Confidential Financial Disclosure Reports which are not already covered by the government-wide SORNs Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records (OGE/GOVT–1) and Confidential Statements of Employment and Financial Interests (OGE/GOVT–2); and any other name-retrieved Ethics Program Records. Information contained in the Ethics Program Records will be generated by CFPB employees who: Provide ethics advice; review and approve outside activities requests; create ethics agreements; and track completion of employee orientation and annual training sessions. Whenever practicable, the CFPB will collect information about an individual directly from that individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Ethics in Government Act of 1978, 5 U.S.C. app.; Ethics Reform Act of 1989, Pub. L. 101–194; 5 CFR parts 735 & 2634, and other applicable ethics-related laws, rules, and Executive Orders; Pub. L. 111–203, Title X, Section 1012 codified at 12 U.S.C. 5492.[1]

PURPOSE(S):

The information in the system is being collected to manage and appropriately document the CFPB's compliance with government ethics program requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another Federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a Federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court; and

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; and

(9) Appropriate Federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, but not limited to, the individual's name, address, phone number, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published rules on the Disclosure of Records and Information within 12 CFR Chapter X. This SORN is published pursuant to those rules and the Privacy Act.

RETENTION AND DISPOSAL:

The CFPB will maintain computer electronic and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Ethics Officer, 1700 G Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals seeking and responding to requests about ethics issues.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–103 Filed 1–6–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 3, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC, *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Qualified Product List for Wild Land Fire Chemicals.

OMB Control Number: 0596–0182.

Summary of Collection: The Forest Service (FS) objective is, ''To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively.'' To accomplish their objective, FS evaluates chemical products that may be used in direct wildland fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general.

Need and Use of the Information: FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products using various Technical Data Sheets and other forms. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. The information collected is specific mixing requirements and hydration requirements of gum-thickened retardants. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environment Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredients used in a formulation would not be known.

Note: Forest Service is merging burden and forms from 0596–0183 ''Qualified Products List for Class A foams for Wild land Firefighting'' and 0596–0184 ''Qualified Products List for Long-Term Retardants for Wild Land Firefighting'' into the renewal of this collection.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 39.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–89 Filed 1–6–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0115]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

DATES: The meeting will be held on January 25, 2012, from 1:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Georgia World Congress Center, 285 Andrew Young International Boulevard NW., Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Dr. C. Stephen Roney, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1506 Klondike Road, Suite 300, Conyers, GA 30094; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential

function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Topics for discussion at the upcoming meeting include:

1. Use of performance standards in the NPIP regulations.
2. The Food and Drug Administration's egg safety rule and NPIP salmonella testing equivalency update.
3. Compartmentalization.
4. 2012 Biennial Conference.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the discussions during the meeting. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. APHIS–2011–0115 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 3rd day of January 2012.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–88 Filed 1–6–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the USDA Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is seeking nominations for individuals to serve on the USDA Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets twice annually to advise GIPSA on the programs and services it delivers under the U.S. Grain Standards Act (USGSA). Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: GIPSA will consider nominations received by February 8, 2012.

ADDRESSES: Submit nominations for the Advisory Committee by completing form AD–755 and mail to:

- Thomas Vilsack, Secretary, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250 Attn: Grain Inspection Advisory Committee.

Form AD–755 may be obtained via USDA's Web site: *http://www.ocio.usda.gov/forms/doc/AD–755.pdf.*

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, telephone (202) 205–8281 or email *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: As required by section 21 of the USGSA (7 U.S.C. 87j), as amended, the Secretary of Agriculture (Secretary) established the Advisory Committee on September 29, 1981, to provide advice to the GIPSA Administrator on implementation of the USGSA. The current authority for the Advisory Committee expires on September 30, 2015. As specified in the USGSA, each member's term is 3 years and no member may serve successive terms.

The Advisory Committee consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists with expertise in research related to the policies in section 2 of the USGSA (7 U.S.C. 74). While members of the Advisory Committee serve without compensation, USDA reimburses them for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service (see 5 U.S.C. 5703).

A list of current Advisory Committee members and other relevant information are available on the GIPSA Web site at *http://www.gipsa.usda.gov.* Under the section ''I Want To * * * '' select ''Learn about the Advisory Committee.''

GIPSA is seeking nominations for individuals to serve on the Advisory Committee to replace six members and four alternate members whose terms will expire March 31, 2012.

Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that recommendations of the Advisory Committee take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates is made by the Secretary.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–87 Filed 1–6–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Resume the Bee and Honey Surveys and All Associated Reports

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of resumption of data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to resume a currently approved information collection for bee and honey data and all associated reports.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333, or through the NASS OMB Clearance Officer at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bee and Honey Surveys and Publications.

OMB Control Number: 0535–0153.

Expiration Dates of Approval: May 31, 2013.

Type of Request: To resume a currently approved information collection.

Abstract: The primary functions of the National Agricultural Statistics Service includes the collection of data and the preparation and issuance of state and national estimates of crop and livestock production, disposition, prices, and environmental and economic factors.

The current OMB approval for the Bee and Honey Survey is for all States except Alaska. The estimated population is approximately 10,000 operations. The survey is conducted once a year. Under this survey program, NASS asks for: The number of colonies owned; the number of colonies honey is harvested from; how many pounds of honey were harvested; how many pounds of honey are in Stock on December 15th; and how many pounds of honey were sold and the correlating price. The respondents are also asked to break out their sales by honey color class and marketing channel(s).

Timeline: This collection was suspended on November 17, 2011 due to budget constraints. After having secured additional funding, NASS will resume this information collection on January 23, 2012 and will publish the survey results on March 30, 2012.

Authority: These data are collected under authority of 7 U.S.C. 2204(a) (General Duties of the Secretary of Agriculture). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Signed at Washington, DC, December 12, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–166 Filed 1–6–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 1–2012]

Foreign-Trade Zone 100—Dayton, OH; Application for Reorganization under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Dayton Foreign-Trade Zone, Inc., grantee of FTZ 100, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 3, 2012.

FTZ 100 was approved by the Board on May 1, 1984 (Board Order 249, 49 FR 19688, 5/9/1984) and expanded on July 7, 1988 (Board Order 388, 53 FR 27184, 7/19/1988) and on March 12, 1999 (Board Order 1027, 64 FR 14212, 3/24/1999).

The current zone project includes the following sites: *Site 1* (1005 acres)—within the Dayton International Airport Complex, Vandalia, Montgomery County; *Site 2* (39 acres)—Metro West, 2300 McCall Street, Dayton; *Site 3* (6 acres)—Lewis & Michael, 1827 Woodman Drive, Dayton; *Site 4* (5 acres)—Shoup Mill Farms Industrial Park, 4966 Riverton Drive, Dayton; *Site 5* (117 acres)—South Tech Business Park, Interstate 75 and Miamisburg-Springboro Road, Springboro, Montgomery County; and *Site 6* (3 acres)—Gosiger Inc., 187 McDonough, Dayton, Montgomery County.

The grantee's proposed service area under the ASF would be Auglaize, Darke, Fayette, Greene, Mercer, Miami, Montgomery, Preble and Shelby Counties, Ohio, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Dayton Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include existing Site 1 as a ''magnet'' site. The applicant has requested that existing Sites 2–5 be removed and that the acreage of Site 1 be reduced to 385 acres. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting that existing Site 6 be included as a ''usage-driven'' site. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 100's authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 9, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 26, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: January 3, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–165 Filed 1–6–12; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2005, the Department of Commerce (''Department'') published in the **Federal Register** the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'').[1] The Department is conducting a new shipper review (''NSR'') of the *Order,* covering the period of review (''POR'') of February 1, 2010, through January 31, 2011. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* January 9, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit and Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031 and (202) 482–0588.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.214(c) of the Department's

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) (''*Order*'').

regulations, the Department received a NSR request from Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited (collectively, ''Thong Thuan''). Thong Thuan certified that it was the producer and exporter of the subject merchandise upon which the request was based. On March 23, 2011, the Department published a notice of initiation of the NSR of the *Order* for Thong Thuan.[2] On April 1, 2011, the Department issued its original antidumping duty questionnaire to Thong Thuan. Between April 29, 2011, and October 5, 2011, Thong Thuan submitted responses to the original and supplemental sections A, C, D, and Importer antidumping duty questionnaires.

On April 13, 2011, the Department sent Thong Thuan a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (''FOP''). On June 10, 2011, and July 17, 2011, Thong Thuan submitted surrogate country comments and surrogate value (''SV'') data.[3]

On September 7, 2011, the Department extended the deadline for the preliminary results of this review to November 9, 2011.[4] On November 1, 2011, the Department further extended the deadline to December 9, 2011.[5] On November 29, 2011, the Department fully extended the deadline to January 9, 2012.[6]

Scope of the Order

The scope of the orders includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[7] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of these orders, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (Penaeus vannemei), banana prawn (Penaeus merguiensis), fleshy prawn (Penaeus chinensis), giant river prawn (Macrobrachium rosenbergii), giant tiger prawn (Penaeus monodon), redspotted shrimp (Penaeus brasiliensis), southern brown shrimp (Penaeus subtilis), southern pink shrimp (Penaeus notialis), southern rough shrimp (Trachypenaeus curvirostris), southern white shrimp (Penaeus schmitti), blue shrimp (Penaeus stylirostris), western white shrimp (Penaeus occidentalis), and Indian white prawn (Penaeus indicus).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of these orders. In addition, food preparations (including dusted shrimp), which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of these orders.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce;[8] (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of these orders is dispositive.[9]

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[10] We calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determination

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the

[2] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 76 FR 16384 (March 23, 2011).

[3] *See* Thong Thuan's June 10, 2011 submission.

[4] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review,* 76 FR 55350 (September 7, 2011).

[5] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review,* 76 FR 67418 (November 1, 2011).

[6] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review,* 76 FR 73594 (November 29, 2011).

[7] ''Tails''' in this context means the tail fan, which includes the telson and the uropods.

[8] The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the PRC case.

[9] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (''CIT'') decision in *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (''ITC'') determination, which found the domestic like product to include dusted shrimp. Because the amendment of the antidumping duty order occurred after this POR, dusted shrimp continue to be excluded in this review. *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23227 (April 26, 2011); *see also, Ad Hoc Shrimp Trade Action Committee* v. *United States,* 703 F. Supp. 2d 1330 (CIT 2010) (''Ad Hoc'') and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011 (''ITC Review Final'').

[10] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 11349 (March 17, 2009).

Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this NSR, Thong Thuan submitted complete responses to the separate rate section of the Department's NME questionnaire. The evidence submitted by Thong Thuan includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding its operations and selection of management. We believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over Thong Thuan.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.[11]

In its questionnaire responses, Thong Thuan submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) Thong Thuan sets its own export prices independent of the government and without the approval of a government authority; (2) Thong Thuan retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Thong Thuan has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the company's use of export revenues. Therefore, the Department preliminarily finds that Thong Thuan has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Thong Thuan in this NSR.[12] We found that the sale by Thong Thuan was made on a *bona fide* basis.[13] Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Thong Thuan, and the company's eligibility for separate rates (*see* Separate Rate Determination section above), we preliminarily determine that Thong Thuan has met the requirement to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results, we are treating Thong Thuan's sale of subject merchandise to the United States as an appropriate transaction for this NSR.

Surrogate Country

When the Department conducts a review of imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. Further, pursuant to section 351.408(c)(2) of the Department's regulations, the Department will normally value FOPs in a single country, except for labor. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below.[14]

As noted above, on April 13, 2011, the Department sent Thong Thuan a letter requesting comments on surrogate country selection and information pertaining to valuing FOPs. On June 10, 2011, and June 17, 2011, the Department received comments from Thong Thuan suggesting that the Department select Bangladesh as the surrogate country, as well as Bangladeshi SV data.[15]

Pursuant to its practice, the Department received a list of potential surrogate countries from Import Administration's Office of Policy (''OP'').[16] The OP determined that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia were at a comparable level of economic development to Vietnam.[17] The Department considers the six countries identified by the OP in its Surrogate Country List as ''equally comparable in terms of economic development.''[18] Thus, we find that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia are all at an economic level of development equally comparable to that of Vietnam. We note that the Surrogate Country List is a non-

[11] *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[12] *See, e.g., Fourth New Shipper Review of Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review,* 76 FR 45775 (August 1, 2011).

[13] For more detailed discussion of this issue, see Memorandum to the File, through Scot T. Fullerton, Program Manager, Office IX, from Susan Pulongbarit, International Trade Analyst, ''*Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Thong Thuan Seafood Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited,'' dated concurrently with this notice.

[14] *See also* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, ''Fifth New Shipper Review of Frozen Warmwater Shrimp from Vietnam: Surrogate Values for the Preliminary Results,'' dated concurrently with this notice (''SV Memo'').

[15] *See* Thong Thuan's June 10, 2011, and June 17, 2011 submission.

[16] *See* Letter to All Interested Parties, from Scot T. Fullerton, Program Manager, regarding New Shipper Review of Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Country Selection, dated April 13, 2011, at Attachment I (''Surrogate Country List'').

[17] *Id.*

[18] *Id.*

exhaustive list of economically comparable countries.

Thong Thuan submitted evidence that Bangladesh, Pakistan, India, Sri Lanka, the Philippines and Indonesia are all significant producers of comparable merchandise.[19] However, while we find that these countries are economically comparable to Vietnam and produce comparable merchandise, we note that the record contains limited publicly available SV factors of production (''FOP'') information for India and Indonesia, but no publicly available SV FOP information for Pakistan, Sri Lanka, or the Philippines.

With regard to Bangladesh, the record contains publicly available SV factor information for the majority of FOPs. Given the above-cited facts, we find that the information on the record shows that Bangladesh is an appropriate surrogate country because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data for the majority of the factors of production.

U.S. Price

In accordance with section 772(a) of the Act, the Department calculated the export price (''EP'') for sales to the United States, because the first sale to an unaffiliated party was made before the date of importation. The Department calculated EP based on the price to the unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to the unaffiliated purchaser foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on SVs. Additionally, for international freight provided by an ME provider and paid in an ME currency, we used the actual cost per kilogram of the freight.[20]

Normal Value

A. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

B. Factor Valuations [21]

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input. During the POR, Thong Thuan reported that it purchased a certain input from an ME supplier and paid for the input in an ME currency.[22] The Department confirmed that this input was produced in a ME country through supplemental questionnaires.

The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.[23] In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.[24] When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide,* or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33-percent threshold.[25] Because Thong Thuan's ME purchase of broodstock exceeded the 33-percent threshold, we have valued this input using the ME purchase price paid by Thong Thuan.

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Thong Thuan for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi SVs. In selecting SVs, we considered the quality, specificity and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production, or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's (''CAFC'') decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[26] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-

[19] *See* Thong Thuan's June 10, 2011 submission at Exhibit 1.

[20] *See* SV Memo for details regarding the SVs for movement expenses.

[21] In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results in an antidumping NSR, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of the preliminary results.

[22] *See* Letter from Thong Thuan, to Secretary of Commerce, regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated June 2, 2011, at Exhibit D–4.

[23] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–18 (October 19, 2006) (''*Antidumping Methodologies*'').

[24] *Id.*

[25] *Id.*

[26] *See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong.,* 2nd Sess. (1988) (''*OTCA 1988*'') at 590.

industry specific export subsidies.[27] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries.[28] Moreover, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[29] Lastly, the Department has also excluded imports identified as being from Bangladesh into Bangladesh because there is no information on the record regarding what these data represent (*e.g.,* another category of unspecified imports or the result of an error in reporting). Thus, these data do not represent the best available information upon which to rely for valuation purposes.[30]

Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Bangladeshi import-based SVs or in calculating ME input values. In instances where an ME input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based SVs to value the input.

The Department used UN ComTrade Statistics, provided by the UN Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi SV data to value the raw material and packing material inputs that Thong Thuan used to produce the merchandise under review during the POR, except where listed below.[31] For a detailed description of all SVs, *see* SV Memo. The data represents cumulative values for the calendar year 2007, for inputs classified by the Harmonized Commodity Description and Coding System number. As noted above, for each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries, countries that the Department has determined to be countries which subsidized exports (*i.e.,* Indonesia, South Korea, Thailand, and India), imports from unspecified countries and imports from Bangladesh into Bangladesh.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, SVs that are not contemporaneous with the POR using the wholesale price index (''WPI'') for the subject country.[32] However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POR with which to value factors could not be obtained, SVs were adjusted using the Consumer Price Index (''CPI'') rate for Bangladesh, or the WPI for Indonesia (for certain SVs where Bangladeshi data could not be obtained), as published in the *International Financial Statistics* of the International Monetary Fund.

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. We relied on the daily exchange rates posted on the Import Administration Web site.[33]

Consistent with the *Fifth Vietnam Shrimp AR,* we valued labor using 2009 data collected by the Bangladesh Bureau of Statistics. We inflated the value using the POR average CPI rate.[34]

We valued electricity using data from the Bangladesh Ministry of Power, Energy, & Mineral Resources. This information was published on their Power Division's Web site. We valued water using 2007 data from the Asian Development Bank. We inflated the value using the POR average CPI rate. We valued diesel using data published by the World Bank in ''Bangladesh: Transport at a Glance,'' published in June 2006. We inflated the value using the POR average CPI rate.

To value truck freight, we used data published in *2008 Statistical Yearbook of Bangladesh* published by the Bangladesh Bureau of Statistics. We inflated the value using the POR average CPI rate. We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank. Because the price is for 2009, we inflated the value using the POR average CPI rate.

We valued the by-product using shell scrap values using a surrogate value for shrimp by-products based on a purchase price quote for wet shrimp shells from an Indonesian buyer of crustacean shells. Although we recognize that Thong Thuan reported by-products other than shells and that this surrogate value is not from Bangladesh, the primary surrogate country, this information represents the best information on the record and has been used in past case segments.[35] Moreover, we also note that this is the only surrogate value on the record for by-products, and as a consequence, is being used for these preliminary results. We

[27] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *see Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; *see Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

[28] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

[29] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR56158 (September 12, 2011) (''*Fifth Vietnam Shrimp AR*'') unchanged at *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 64307 (October 18, 2011) (''*Fifth Vietnam Shrimp Amended Final*'').

[30] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

[31] This can be accessed online at: *http://www.unstats.un.org/unsd/comtrade/.*

[32] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China,* 69 FR 29509 (May 24, 2004).

[33] *See http://www.trade.gov/ia/, see also* SV Memo.

[34] *See Fifth Vietnam Shrimp AR,* unchanged at *Fifth Vietnam Shrimp Amended Final.*

[35] *See* SV Memo which contains the following memorandum: Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Christian Hughes and Adina Teodorescu, Case Analysts, ''Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/00 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01.''

inflated the value using the POR average CPI rate.[36]

To value factory overhead, selling, general and administrative expenses, and profit, we used the simple average of the 2009–2010 financial statement of Apex Foods Limited and the 2008–2009 financial statement of Gemini Seafood Limited, both of which are Bangladeshi shrimp processors.[37]

Preliminary Results of Review

The Department has preliminarily determined that the following dumping margin exists for the period February 1, 2010, through January 31, 2011:

Manufacturer/exporter	Margin
Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited	0.00%

Disclosure

The Department will disclose to parties of this proceeding the calculation performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations.

Comments

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with section 351.301(c)(1) of the Department's regulations, for the final results of this NSR, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party within 10 days of the applicable deadline for submission of such factual information. However, the Department notes that section 351.301(c)(1) of the Department's regulations permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.[38]

In accordance with section 351.309(c)(ii) of the Department's regulations, interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of this NSR. In accordance with section 351.309(d) of the Department's regulations, rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for submitting the case briefs. The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results.[39] 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 we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The Department intends to issue the final results of this NSR, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 351.214(i) of the Department's regulations.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this NSR. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this NSR. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific (or customer) *ad valorem* duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Cash-Deposit Requirements

The following cash deposit requirement will be effective upon publication of the final results of this NSR for all shipments of subject merchandise produced and exported from Thong Thuan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Thong Thuan, the cash deposit rate will be the rate established in the final results of this NSR. If the cash deposit rate calculated in the final results is zero or *de minimis,* no cash deposit will be required for the specific producer-exporter combination listed above; (2) for subject merchandise exported by Thong Thuan but not manufactured by Thong Thuan, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* 25.76 percent); and (3) for subject merchandise manufactured by Thong Thuan, but exported by any other party, the cash deposit rate will be the Vietnam-wide rate (*i.e.,* 25.76 percent). The cash deposit requirement, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of its responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. 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.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and sections 351.214(h) and 351.221(b)(4) of the Department's regulations.

Dated: January 3, 2012.

Christian Marsh,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–162 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–DS–P

[36] *Id.*

[37] *See* SV Memo at Exhibit 7.

[38] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[39] *See* section 351.310(c) of the Department's regulations.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium From France: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department of Commerce (Department) is initiating a changed circumstances review of the antidumping duty order on low enriched uranium (LEU) from France with respect to Eurodif S.A. and AREVA NP Inc. (collectively, AREVA).

DATES: *Effective Date:* January 9, 2012.

FOR FURTHER INFORMATION CONTACT: Emily Halle, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 2011, AREVA requested that the Department initiate and conduct an expedited changed circumstances review to amend the scope of the antidumping duty order as it applies to one entry of LEU entered by AREVA that was not subject to the antidumping duty order at the time of entry. AREVA provided additional information on December 13, 2011, including entry documentation and a more detailed description of the circumstances leading to this request.[1] At the time of the entry at issue, the entry met the requirements of a narrow exclusion from the scope of the order (*see Scope of the Order* section, below). However, as a result of the temporary shutdown of its Japanese customer caused by the earthquake and tsunami that struck Japan on March 11, 2011,[2] AREVA will be unable to meet the requirements of the scope exclusion by re-exporting the LEU within the specified deadline. Therefore, AREVA is requesting that the Department conduct a changed circumstances review for the purpose of amending the scope of the order to extend by 18 months the deadline for re-exporting the LEU entry at issue.

On December 14, 2011, USEC Inc. and its subsidiary, United States Enrichment Corporation (collectively, ''USEC''), submitted a letter expressing no objection to AREVA's request regarding the entry at issue.

Scope of the Order

The product covered by the order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of the order. Specifically, the order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of the order. For purposes of the order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of the order.

Also excluded from the order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Based on the information and documentation AREVA submitted in its December 5 and December 13, 2011 letters, we find that we have received information which shows changed circumstances sufficient to warrant initiation of such a review in order to determine whether the circumstance described by AREVA support an extension of the 18-month period to re-export the specified entry of LEU that is currently under the 18-month exclusion from the antidumping duty order.[3] Therefore, in accordance with the above-referenced statute and regulation, the Department is initiating a changed circumstances review.

AREVA also requested that the Department conduct an expedited changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(ii), and issue the preliminary results of changed circumstances review together with the initiation. The Department has decided that simultaneous issuance of the preliminary review is not appropriate. However, the Department does intend to issue the preliminary results of the changed circumstances review within 30 days of the publication of this initiation notice. Parties wishing to provide factual information for the Department's consideration must do so within 15 days of the publication of this notice. We intend to issue the final results of the changed circumstances review within 270 days from the date of initiation of this changed circumstance review, or within 45 days of the date of initiation if all parties to the proceeding agree to the outcome of the review.[4]

This notice of initiation is in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: December 30, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–157 Filed 1–6–12; 8:45 a.m.]

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[1] *See* Letter from AREVA, ''Low Enriched Uranium from France,'' dated December 13, 2011.

[2] *See* Letter from AREVA, ''Low Enriched Uranium from France,'' dated December 5, 2011.

[3] *See* 19 CFR 351.216(d).

[4] *See* 19 CFR 351.216(e).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–977]

High Pressure Steel Cylinders From the People's Republic of China: Postponement of Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 9, 2012.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe or Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–0219 or (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2011, the Department of Commerce (''Department'') initiated an antidumping duty investigation on high pressure steel cylinders from the People's Republic of China (''PRC'').[1] On December 15, 2011, the Department published its preliminary determination of sales at less than fair value.[2] The final determination of this antidumping duty investigation is currently due 75 days after the date of the *Preliminary Determination.*[3]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that the Department may postpone a final determination until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. In addition, 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On December 12, 2011, Beijing Tianhai Industry Co., Ltd., the entity comprising the sole mandatory respondent in this investigation, requested a postponement of the final determination and an extension of the provisional measures pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(e)(2). In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b), because (1) Our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise,[4] and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the **Federal Register**, or April 28, 2012.[5] Suspension of liquidation will be extended accordingly.

This notice is issued and published pursuant to sections 777(i) and 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: December 30, 2011.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–78 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See High Pressure Steel Cylinders from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 33213 (June 8, 2011).

[2] *See High Pressure Steel Cylinders From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 76 FR 77964 (December 15, 2011) (''*Preliminary Determination*'').

[3] *See* section 735(a)(1) of the Tariff Act of 1930, as amended (''Act''). The Department incorrectly noted the deadline for the final determination as 135 days after publication of the *Preliminary Determination. See Preliminary Determination,* 76 FR at 77974.

[4] *See, e.g., Preliminary Determination,* 76 FR at 77965.

[5] As April 28, 2012, is a Saturday, the signature day will be the next business day, April 30, 2012, in accordance with our practice. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Survey of the Need for the Improvement of Infrared Reflectance Measurements and Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 9, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Leonard Hanssen (Tel. (301) 975–2344, email: *hanssen@nist.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new information collection.

The Sensor Science Division (SSD) of the Physical Measurement Laboratory of the National Institute of Standards and Technology (NIST) is responsible for providing standards for the characterization of the optical properties of materials for the United States. This serves the needs of a wide range of industries as well as government and academic laboratories. An increasingly important part of the optical spectrum is the infrared spectral range from 1 μm to 20 μm. Over the past two decades, the SSD has been working to establish physical standards, measurement methods and measurement services in the infrared. As part of this ongoing effort, and in response to many inquiries and requests in recent years, NIST plans to survey members of the infrared optical properties measurement community. The purpose of the survey is to assess their needs for standard reference materials, calibration services, workshops, courses, and other means for improvement of the quality of their measurement data and traceability to national standards.

II. Method of Collection

The survey will be will be sent as an email attachment to the participants; and the completed survey will be returned to NIST via email.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 120.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 60.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 4, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–115 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application Forms for Membership on a National Marine Sanctuary Advisory Council

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 9, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Shortland, (912) 598–2381 or *Becky.Shortland@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. Advisory councils are individually chartered for each sanctuary to meet the needs of that sanctuary. Once an advisory council has been chartered, the sanctuary superintendent starts a process to recruit members for that council by providing notice to the public and requesting interested parties to apply for the available seat(s) (*e.g.,* Research, Education) and position(s) (*i.e.,* council member or alternate). The information obtained through this application process will be used to determine the qualifications of the applicant for membership on the sanctuary advisory council.

Two application forms are currently associated with this information collection: (a) National Marine Sanctuary Advisory Council Application form; and (b) National Marine Sanctuary Advisory Council Youth Seat Application form. These application forms are currently being revised to ensure consistency between the forms, as well as clarify the information and supplemental materials to be submitted by applicants. Application form instructions will specify requirements imposed upon the agency when reviewing applicants as potential council members or alternates, including the need to assess potential conflicts of interest (or other issues) and the applicant's status as a federally-registered lobbyist. Specific questions posed to applicants will be reordered, reworded and, at times, condensed to improve the organization of applicant responses and, thereby, simplify the applicant review process.

II. Method of Collection

Complete applications may be submitted electronically via email (with attachments), by mail, or by facsimile transmission.

III. Data

OMB Control Number: 0648–0397.

Form Number: None.

Type of Review: Regular submission (revision and extension of a currently approved collection).

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 520.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 520.

Estimated Total Annual Cost to Public: $1,040.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 3, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–102 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA881

Endangered Species; File Nos. 16229 and 16548

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

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that the North Carolina Zoo, 4401 Zoo

Parkway, Asheboro, NC 27203 [David Jones, Responsible Party], and the Springfield Science Museum, 21 Edwards Street Springfield, MA 01103 [David J. Stier, Responsible Party] have been issued permits to take shortnose sturgeon for purposes of enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore and Colette Cairns, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On July 11, 2011 and August 19, 2011, notices were published in the **Federal Register** (76 FR 51945 and 76 FR 40699) that requests for enhancement permits to take shortnose sturgeon had been submitted by the above-named organizations. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The North Carolina Zoo and the Springfield Science Museum have been issued permits to continue enhancement activities previously authorized under Permit Nos. 1545 and 1555, respectively. Activities include the continued maintenance, transport and educational display of captive-bred, non-releaseable adult shortnose sturgeon. The permits do not authorize any takes from the wild, nor do they authorize any release of captive sturgeon into the wild. These permits are valid for a duration of 5 years.

Issuance of the permits, as required by the ESA, was based on a finding that such permits (1) were applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 3, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–151 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA900

Endangered Species; File No. 16146

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Kristen Hart, Ph.D., U.S. Geological Survey, Southeast Ecological Science Center, Davie Field Office, Davie, FL has been issued a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for the purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On July 25, 2011, notice was published in the **Federal Register** (76 FR 44306) that a request for a scientific research permit to take loggerhead, green, and hawksbill sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Hart is authorized to study green, hawksbill, and loggerhead sea turtles at Buck Island Reef National Monument, U.S. Virgin Islands. The purposes of the research are to determine species-specific habitat-use patterns over time, increase understanding of genetic stock structure, and estimate vital rates and local population abundance of sea turtles. Researchers may visually count sea turtles during vessel surveys or capture animals by hand, rodeo, dip net, tangle net or cast net for sampling and tagging. Captured sea turtles may have the following procedures performed: epibiota removal, lavage, temporary carapace marking, flipper and passive integrated transponder tagging, measuring, photograph, recapture, blood sampling, fecal sampling, tissue biopsy, and weighing. A subset of animals also may be tagged with satellite tags and data loggers (epoxy attachments) and/or acoustic transmitters (epoxy or drill carapace and attach with wire). The permit is valid for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 27, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–146 Filed 1–6–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice decision.

SUMMARY: The Department of Education (Department) gives notice that on August 29, 2011, an arbitration panel rendered a decision in the matter of *Judy A. Davis-Perry* v. *Missouri Department of Social Services Rehabilitation Services for the Blind,* Case no. R–S/10–1. The Department convened this panel after receiving a complaint filed by the Complainant, Judy A. Davis-Perry.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Mary Yang, U.S. Department of Education, 400 Maryland Avenue SW., room 5162, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–6327. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible

format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Judy A. Davis-Perry (Complainant) alleged violations by the Missouri Department of Social Services, Rehabilitation Services for the Blind, the State licensing agency (SLA) under the Act, and implementing regulations in 34 CFR part 395. Complainant alleged that the SLA improperly denied her bid to manage Vending Facility #195, a vending machine facility, at the Internal Revenue Service (IRS) Consolidation offices in Kansas City, Missouri.

Specifically, Complainant alleged that the SLA's selection procedures was biased and flawed and that the SLA discriminated against her in selecting another bidder.

On October 30, 2009, the SLA mailed out a bid announcement to all licensed blind vendors notifying them of a Level II vending opening at Vending Facility #195.

On November 5, 2009, Complainant submitted her bid to manage Vending Facility #195.

On November 21, 2009, the SLA's Executive Committee (Committee,) which had the responsibility to administer the SLA's transfer and promotions procedures, interviewed five applicants for Vending Facility #195, including Complainant.

On November 24, 2009, the Committee discussed the applicants and voted unanimously to recommend another vendor to Vending Facility #195.

The successful applicant was also a member of the Committee. However, the successful applicant did not participate in the interviews of the other applicants, the Committee's discussions, or its decision.

The successful applicant was the first or second choice of all five Committee members. Complainant was ranked no higher than third on any Committee member's ballot.

On November 30, 2009, the Deputy Director of the SLA advised Complainant that another applicant had been awarded the bid to manage Vending Facility #195. Subsequently, Complainant requested an administrative review from the SLA concerning the appointment of another vendor to manage Vending Facility #195.

On December 21, 2009, SLA staff advised Complainant that her administrative review had been scheduled for January 10, 2010.

On January 25, 2010, the SLA's Deputy Director issued a written decision to Complainant rejecting her complaint about the selection process and the appointment of the other vendor to Vending Facility #195.

On February 2, 2010, Complainant filed for a State fair hearing of her complaint regarding Vending Facility #195. The SLA held a State fair hearing on July 28, 2010.

On August 12, 2010, the hearing officer issued a written recommendation to the SLA rejecting Complainant's complaint about the appointment and selection process for Vending Facility #195. The hearing officer's recommendation was later adopted by the SLA as its final administrative decision.

Subsequently, Complainant filed with the Department a request for Federal arbitration seeking an appeal of the State fair hearing decision. A Federal arbitration panel was convened on May 5, 2011, pursuant to 20 U.S.C. 207d–1(a). The issues as stated by the Federal arbitration panel were: (1) Whether the SLA's final decision to select another vendor to manage Vending Facility #195, instead of Complainant, was supported by competent and substantial evidence based upon the whole record or, rather, constituted an abuse of discretion, was arbitrary and capricious or was made without statutory authority; and (2) whether the SLA's final decision to select another blind operator to manage Vending Facility #195, instead of Complainant, unlawfully discriminated against Complainant on the basis of her physical disability or impairment.

Arbitration Panel Decision

After reviewing all of the testimony and evidence, the majority of the panel denied Complainant's complaint in its entirety. Specifically, the panel majority found that the SLA's selection of another blind vendor was supported by substantial evidence based on the entire record. The panel majority rejected Complainant's argument that the Committee's recommendations to the SLA were inconsistent with the Randolph-Sheppard Act and the implementing regulations. Similarly, the panel majority rejected Complainant's argument that the SLA's Deputy Director merely rubber stamped the Committee's recommendations to select another vendor for Vending Facility #195. The panel concluded that the evidence did not support Complainant's allegation that the process used in selecting another vendor was biased or flawed.

Concerning issue number 2 Complainant alleged that the SLA discriminated against her by providing the Committee information about a customer complaint concerning Complainant's service dog wandering around her convenience store. The panel majority concluded that Complainant failed to produce any evidence that suggested that the SLA considered Complainant's use of a service dog in making its recommendation and award of Vending Facility #195.

One panel member concurred with the panel majority's decision to deny the Complainant's grievance in whole, but dissented from the decision on the process of awarding vending facilities by the SLA, stating that there are some potential problems with the SLA's current bid-selection process, possibly due to the small number of blind vendors in the program.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

Electronic Access to This Document: The Official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 4, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–147 Filed 1–6–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–261–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Environmental Filing 2011 to be effective 2/1/2012.
Filed Date: 12/28/11.
Accession Number: 20111228–5036.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: RP12–262–000.
Applicants: Midwestern Gas Transmission Company.
Description: RPAL Modification to be effective 1/27/2012.
Filed Date: 12/28/11.
Accession Number: 20111228–5088.
Comments Due: 5 p.m. ET 1/9/12.

Docket Numbers: RP12–263–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: CIMA Negotiated Rate Filing to be effective 1/1/2012.
Filed Date: 12/29/11.
Accession Number: 20111229–5167.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: RP12–264–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Concord Negotiated Rate Filing to be effective 1/1/2012.
Filed Date: 12/29/11.
Accession Number: 20111229–5168.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: RP12–265–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Environmental Filing 2011 Errata to be effective 2/1/2012.
Filed Date: 12/29/11.
Accession Number: 20111229–5169.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: RP12–266–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Negotiated Rate Filing—MIECO to be effective 1/1/2012.
Filed Date: 12/29/11.
Accession Number: 20111229–5170.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: RP12–268–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Annual Accounting Report 12/30/11 to be effective N/A.
Filed Date: 12/30/11.
Accession Number: 20111230–5028.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: RP12–269–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Con Ed 2012–01–01 Release to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5030.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: RP12–270–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Annual Flowthrough Crediting Mechanism 12/30/11 to be effective N/A.
Filed Date: 12/30/11.
Accession Number: 20111230–5045.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: RP12–271–000.
Applicants: Texas Eastern Transmission, LP.
Description: EPC FEB 2012 FILING to be effective 2/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5049.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: RP12–272–000.
Applicants: Northern Natural Gas Company.
Description: 20111230 Negotiated Rate to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5052.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: RP12–273–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/30/11 Negotiated Rates—Citigroup Energy—Amendment 3 to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5103.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: RP12–274–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Report of Iroquois Gas Transmission System, L.P. under RP12–274, Measurement Variance/Fuel Use Factors utilized by Iroquois during the period July 1, 2011 through December 31, 2011.
Filed Date: 12/30/11.
Accession Number: 20111230–5106.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: RP12–275–000.
Applicants: Dominion Cove Point LNG, LP.
Description: DCP—Liquefaction Modifications to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5165.
Comments Due: 5 p.m. ET 1/11/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–223–001.
Applicants: Guardian Pipeline, LLC.
Description: Sequent Amendment to be effective 5/1/2011.
Filed Date: 12/29/11.
Accession Number: 20111229–5118.
Comments Due: 5 p.m. ET 1/10/12.

Docket Numbers: RP11–2168–002.
Applicants: Trailblazer Pipeline Company LLC.
Description: Expansion Fuel Filing to be effective 1/1/2012.
Filed Date: 12/30/11.
Accession Number: 20111230–5004.
Comments Due: 5 p.m. ET 1/11/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 3, 2012.

Nathaniel J. Davis, Sr.

Deputy Secretary

[FR Doc. 2012–116 Filed 1–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1281–010.
Applicants: 330 Fund I, LP v. *New York Independent System Operator, Inc.*
Description: Compliance Notice to confirm timely development of new interface pricing software of New York Independent System Operator, Inc.
Filed Date: 12/22/11.
Accession Number: 20111222–5252.
Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER10–1781–001.

Applicants: Northern Indiana Public Service Company.
Description: Updated Market Power Analysis of Northern Indiana Public Service Company.
Filed Date: 12/28/11.
Accession Number: 20111228–5139.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–2034–001; ER10–2032–002; ER10–2033–002; ER10–1329–001.
Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Corporation, Duke Energy Indiana, Inc., St. Paul Cogeneration, LLC.
Description: Updated market power analysis of Duke Energy Central Region.
Filed Date: 12/28/11.
Accession Number: 20111228–5135.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–2211–001; ER10–2218–001.
Applicants: Vandolah Power Company, L.L.C., Orlando CoGen Limited, L.P.
Description: Vandolah Power Company, L.L.C., *et al.* submits Triennial MBR Compliance Filing.
Filed Date: 12/28/11.
Accession Number: 20111228–5073.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–2570–006.
Applicants: Shady Hills Power Company L.L.C.
Description: Report of Shady Hills Power Company LLC, Submission of triennial market power analysis.
Filed Date: 12/29/11.
Accession Number: 20111229–5147.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–3199–001.
Applicants: Montana-Dakota Utilities Co., a Division.
Description: Montana-Dakota Utilities Co. Triennial Review, Updated Market Power Analysis.
Filed Date: 12/28/11.
Accession Number: 20111228–5138.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–3203–002.
Applicants: J. Aron & Company.
Description: J. Aron & Company's Updated Market Power Analysis for the Southeast Region.
Filed Date: 12/28/11.
Accession Number: 20111228–5134.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER12–706–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM SA No. 3164; Queue No. V4–006, V4–007, V4–030 and V4–031 to be effective 11/28/2011.
Filed Date: 12/28/11.
Accession Number: 20111228–5080.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–707–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position W2–019; Original Service Agreement No. 3165 to be effective 11/28/2011.
Filed Date: 12/28/11.
Accession Number: 20111228–5089.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–708–000.
Applicants: Duke Energy Vermillion II, LLC.
Description: Duke Energy Vermillion II, LLC submits tariff filing per 35.37: Central Triennial Filing to be effective 1/9/2011.
Filed Date: 12/28/11.
Accession Number: 20111228–5107.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER12–709–000.
Applicants: NaturEner Wind Watch, LLC.
Description: NaturEner Wind Watch, LLC submits tariff filing per 35.1: Coordinated Operating Agreement with NorthWestern Corporation to be effective 12/28/2011.
Filed Date: 12/28/11.
Accession Number: 20111228–5109.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–710–000.
Applicants: Northern Indiana Public Service Company.
Description: Northern Indiana Public Service Company submits tariff filing per 35.12: Transmission Upgrade Agreement and Request for Waiver and Expedited Treatment to be effective 12/28/2011.
Filed Date: 12/28/11.
Accession Number: 20111228–5110.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–711–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii: Coordinated and Restated Operating Agreement with NaturEner Wind Watch to be effective 12/21/2011.
Filed Date: 12/28/11.
Accession Number: 20111228–5111.
Comments Due: 5 p.m. ET 1/18/12.

Docket Numbers: ER12–712–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: LGIA Alta 2012 Project, Alta Windpower Development, Alta Wind VII, X, XI to be effective 12/30/2011.
Filed Date: 12/29/11.
Accession Number: 20111229–5096.
Comments Due: 5 p.m. ET 1/19/12.

Docket Numbers: ER12–713–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: SGIA SCE–TA–High Desert LLC Antelope Power Plant Project to be effective 12/30/2011.
Filed Date: 12/29/11.
Accession Number: 20111229–5097.
Comments Due: 5 p.m. ET 1/19/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 29, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–117 Filed 1–6–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9616–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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 EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2373.04; Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated Greenhouse Gases, subparts I, L, DD, SS and QQ (Technical Correction); 40 CFR part 98, subparts I, L, DD, QQ and SS; was approved on 12/09/2011; OMB Number 2060–0650; expires on 12/31/2013; Approved without change.

EPA ICR Number 2396.02; Mandatory Reporting of Greenhouse Gases: Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills (Technical Correction); 40 CFR part 98, subparts T, FF, II and TT; was approved on 12/09/2011; OMB Number 2060–0647; expires on 12/31/2013; Approved without change.

EPA ICR Number 2300.09; Regulation to Establish Mandatory Reporting of Greenhouse Gases (Technical Correction); 40 CFR parts 86, 89, 90, 94, 98, 600, 1033, 1039, 1042, 1045, 1048, 1051, 1054 and 1065; was approved on 12/09/2011; OMB Number 2060–0629; expires on 11/30/2012; Approved without change.

EPA ICR Number 1723.06; Reporting and Recordkeeping Requirements for Importation of Nonroad Engines and Recreational Vehicles (Renewal); 40 CFR part 85; 40 CFR part 89 subparts G and J; 40 CFR part 90 subparts G and J; 40 CFR part 91 subparts H and K; 40 CFR part 92 subparts I and J; 40 CFR part 94 subparts I and J; and 40 CFR part 1068 subparts C and D; was approved on 12/16/2011; OMB Number 2060–0320; expires on 12/31/2014; Approved without change.

EPA ICR Number 0976.15; 2011 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification; 40 CFR 262.12, 262.40, 262.41, 262.75, 263.11, 264.1, 264.11, 265.1, 265.22, 265.75, 266.21, 266.23, 266.70, 266.80, 266.100, 266.108, 270.1; 270.11, 270.13, 270.30, 270.70, 270.72, 273.32, 273.60, 279.42, 279.62 and 279.73; was approved on 12/20/2011; OMB Number 2050–0024; expires on 12/31/2014; Approved with change.

EPA ICR Number 1591.25; Fuel and Fuel Additives (Renewal); 40 CFR 80.65, 80.67, 80.68, 80.69, 80.74, 80.75, 80.76, 80.79, 80.91, 80.94, 80.101, 80.103, 80.104 and 80.105; was approved on 12/27/2011; OMB Number 2060–0277; expires on 12/31/2014; Approved without change.

EPA ICR Number 1657.07; NESHAP for Pulp and Paper Production; 40 CFR part 63 subparts A and S; was approved on 12/30/2011; OMB Number 2060–0387; expires on 12/31/2014; Approved without change.

Comment Filed

EPA ICR Number 1989.08; NPDES CAFO 308 Reporting Rule (Proposed Rule); in 40 CFR 122.21, 122.22, 122.23, 122.28, 122.41, 122.42 and 40 CFR part 412; OMB filed comment on 12/08/2011.

Dated: January 3, 2012.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2012–138 Filed 1–6–12; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 12, 2012, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 8, 2011

B. New Business

- System Audit Committee—Proposed Rule

C. Reports

- Auditor's Report on FCA FY 2011/2010 Financial Statements

Closed Session*

- Executive Meeting with Auditors

Dated: January 5, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–269 Filed 1–5–12; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 9, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(2).

advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B.Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0798.

Title: FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau and Public Safety Homeland Security Bureau.

Form Number: FCC Form 601, Schedules D, I and M.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 253,120 respondents; 253,120 responses.

Estimated Time per Response: 1.25 hours.

Frequency of Response: On occasion and every 10 years reporting requirements, third party disclosure requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534 and 535 of the Communications Act of 1934, as amended.

Total Annual Burden: 221,780 hours.

Total Annual Cost: $55,140,000.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: There is no need for confidentiality. On a case-by-case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: The Commission is seeking OMB approval for a revision of this information collection in order to obtain the full 3-year approval from OMB. There is no change to the Commission's previous burden estimates.

FCC Form 601 is a consolidated, multi-part application form, or ''long form'', that is used for general market-based licensing and site-by-site licensing for wireless telecommunications and public safety services filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that contains the administrative information and a series of schedules used for filing technical and other information. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on the FCC Form 601 include the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires those entities filing with the Commission to use a FRN.

Additionally, the FCC Form 601 is used for auctionable services as they are implemented: FCC Form 601 is used to apply for a new authorization, or to amend a pending application for an authorization to operate a license wireless radio services. This includes Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Fixed Microwave Services, Instructional Television Fixed Service (ITFS) and the Multipoint Distribution Service (MDS), Maritime Services (excluding ships), and Aviation Services (excluding aircraft). It may also be used to modify or renew an existing license, cancel a license, withdraw a pending application, obtain a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change, request a Special Temporary Authority (STA) or a Developmental License.

The Commission is now seeking OMB approval for a revision of the FCC Form 601, Schedules D, I and M to allow respondents the option to provide a pending File Number for an Antenna Structure Registration (ASR). Previously ULS would only accept a granted ASR registration number. This change is being made to allow applicants to file a FCC Form 601 application while the ASR application is going through the new environmental notice process as required by the Migratory Bird Order on Remand, WTB Docket Nos. 08–61 and 03–187, FCC 11–181. The entries for structure type are changing as a result of the Order as well.

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Number: FCC Form 854.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 2,500 respondents; 47,500 responses.

Estimated Time per Response: .5 hours to 60 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 1, 2, 4(i), 303(q), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303(q), 303(r), and 309(j), Section 102(C) of the National Environmental Policy Act of 1969, as Amended, 42 U.S.C. 4332(C), and Section 1506.6 of the regulations of the Council on Environmental Quality, 40 CFR 1506.6.

Total Annual Burden: 21,345 hours.

Total Annual Cost: $975,725.

Privacy Impact Assessment: Yes. This information collection contains personally identifiable information on individuals which is subject to the Privacy Act of 1974. Information on the FCC Form 854 is maintained in the Commission's System of Records, FCC/WTB–1, ''Wireless Services Licensing Records''. These licensee records are publicly available and routinely used in accordance of subsection b of the Privacy Act, 5 U.S.C. 552a(b), as amended. Taxpayer Identification Numbers (TINs) and materials that are afforded confidential treatment pursuant to a request made under 47 CFR 0.459 of the Commission's rules will not be available for public inspection.

Nature and Extent of Confidentiality: Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

The Commission has in place the following policy and procedures for records retention and disposal: Records will be actively maintained as long as the entity remains a tower owner. Paper records will be archived after being keyed or scanned into the Antenna Structure Registration (ASR) database and destroyed when twelve (12) years

old; electronic records will be backed up and deleted twelve (12) years after the registration is no longer valid.

Needs and Uses: The Commission is seeking OMB approval for a revision of this information collection in order to obtain the full three year approval from OMB. There is no change to the Commission's previous burden estimates.

The purpose of the FCC Form 854 is to register antenna structures (radio towers) that are used for wire or radio communication services which are regulated by the Commission; to make changes to existing registered antenna structures or pending applications for registration; or to notify the Commission of the completion of construction or dismantlement of such structures, as required by Title 47 of the Code of Federal Regulations (CFR), Chapter 1, Sections 1.923, 1.1307, 1.1311, 17.1, 17.2, 17.4, 17.5, 17.6, 17.7, 17.57 and 17.58.

On December 9, 2011, the Commission adopted and released the Migratory Bird Order on Remand (*Remand Order*), WTB Docket Nos. 08–61 and 03–187, FCC 11–181, in response to the decision of the Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy* v. *FCC,* 516 F.3d 1027 (D.C. Cir. 2008). The Court held that the Commission's current Antenna Structure Registration (ASR) procedures do not offer members of the public a meaningful opportunity to request an Environmental Assessment for proposed towers the Commission considers categorically excluded from review under the National Environment Policy Act (NEPA). To address the court's holding, the *Remand Order* adds a pre-application notification process to the ASR procedures so that members of the public will have a meaningful opportunity to comment on the environmental effects of proposed antenna structures that require registration with the Commission. The Remand Order also adopts an interim requirement to prepare Environmental Assessments for antenna structures that are over 450 feet in height.

The Commission is revising the FCC Form 854 to comply with the Remand Order by adding questions that will facilitate the pre-application notification process. In addition, FCC Form 854 is being revised to include several administrative-related questions that will enable the Commission to more efficiently process antenna structure registration. The additional questions relate to replacement towers; requirements to post local and national notice so that the public may have a meaningful opportunity to comment on the environmental effects of a proposed structure that requires registration; determining if the structure is located on Federal land; allowing the applicant to select the type of painting and/or lighting it will utilize on the structure being registered; and collecting additional administrative information such as the type of entity that owns the structure, fax number, and count and ZIP code in which the structure is located.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–73 Filed 1–6–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) 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 March 9, 2012. 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 the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0922.

Type of Review: Extension of a currently approved collection.

Title: Broadcast Mid-Term Report, FCC Form 397.

Form Number: FCC Form 397.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 1,180 respondents and 1,180 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Mid-point reporting requirement.

Total Annual Burden: 590 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Broadcast Mid-Term Report (FCC Form 397) is required to be filed by each broadcast television station that is part of an employment unit with five or more full-time employees and each broadcast radio station that is part of an employment unit with more than ten full-time employees. It is a data collection device used to assess broadcast compliance with EEO outreach requirements in the middle of license terms that are eight years in duration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–137 Filed 1–6–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency 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 control number. Comments are requested concerning (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) 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 comments should be submitted on or before February 8, 2012. 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax (202) 395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email: *PRA@fcc.gov,* and *mailto: PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 18,498 respondents; 36,996 responses.

Estimated Time per Response: 0.166–26 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 484,019 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR Section 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–136 Filed 1–6–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it

displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 9, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0400.

Title: Part 61, Tariff Review Plan (TRP).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,840 respondents; 8,554 responses.

Estimated Time per Response: .5 hours to 53 hours.

Frequency of Response: On occasion, annual biennial, and one time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201, 202, 203, and 251(b)(5) of the Communications Act of 1934, as amended.

Total Annual Burden: 121,656 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60 day comment period to obtain the full three year approval from them. The hourly burden has increased by 117,056 hours which is due to an Order that was adopted and released requiring or permitting incumbent and competitive local exchange carriers, as part of transitioning regulation of interstate and intrastate switched access rates and reciprocal compensation rates to bill-and-keep under section 251(b)(5), to file tariffs with state commissions and the FCC. This transition affects different switched access rates at specified timeframes and establishes an Access Recovery Charge by which carriers will be able to assess end users a monthly charge to recover some or all of the revenues they are permitted to recover resulting from reductions in intercarrier compensation rates. Price cap LECs must remove the rate elements in the traffic-sensitive and trunking baskets from price cap regulation on July 1, 2012. There interstate tariff filings will require cost support that generally is encompassed in the existing support burdens and, in many cases, may be satisfied through the data collection encompassed by a new information collection entitled ''*Intercarrier Compensation and Universal Service Compliance and Monitoring*'' which will also be submitted to the OMB for approval and assigned an OMB control number (see description of new information collection below). The intrastate tariff filings may, depending on state requirements, require supporting materials to be filed that may also largely be satisfied by submitting the new information collection referenced above.

As of November 2010, there are 92 total incumbent LECs that file interstate tariffs. Of them, there are 39 ILECs that file pursuant to price cap regulation under Sections 61.41–61.49 of the Commission's rules. Outside of the National Exchange Carrier Association (NECA), there are 12 ILECs filing their own tariffs pursuant to rate-of-return regulation under Section 61.38 of the Commission's rules. The remaining 40 ILECs file their own tariffs pursuant to section 61.39 of the Commission's rules. NECA files one Tariff Review Plan for approximately 1,000 Sections 61.38 and 61.39 ILECs. Therefore, we estimate 51 + 40 + 1 (NECA) = 92 filing entities.

We also estimate that 330 competitive and incumbent LECs will have to make a one-time interstate tariff filing to permit them to assess access charges on Voice over Internet Protocol (VoIP) calls. We estimate that 2,840 competitive and incumbent LECs will have to file intrastate tariffs annually which may require supporting materials to be filed. We also estimate that 2,840 competitive and incumbent LECs will have to make a one-time intrastate tariff filing to establish VoIP rates at interstate rate levels that may require supporting materials to be filed. Finally, we estimate that 1,340 incumbent LECs annually will certify, as part of their tariff filings to the Commission and to the relevant state commission, that they are not seeking duplicative recovery in the state jurisdiction for an Eligible Recovery subject to the recovery mechanism.

For those services still requiring cost support, TRPs assist the Commission in determining whether ILEC access charges are just and reasonable as required under the Communications Act of 1934, as amended.

OMB Control Number: 3060–XXXX.

Title: Intercarrier Compensation and Universal Service Compliance and Monitoring.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,340 respondents; 5,360 responses.

Estimated Time per Response: 1 hour to 15 hours.

Frequency of Response: Annual reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201 through 205 and 251 through 254 of the Communications Act of 1934, as amended.

Total Annual Burden: 61,640 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this new information collection to the Office of Management and Budget (OMB) for approval and assignment of an OMB control number after this comment period to obtain the full three year approval. The Commission estimates a program change increase of 61,640 total annual burden hours for this new information collection.

The USF/ICC Transformation Order, FCC 11–161, requires or permits incumbent and competitive local

exchange carriers (LECs) as part of transitioning regulation of interstate and intrastate switched access and reciprocal compensation rate regulation to bill-and-keep under section 251(b)(5) to file tariffs with state commissions and the FCC. This transition affects different interstate and intrastate switched access rates at specified timeframes and establishes an Access Recovery Charge by which incumbent LECs will be able to assess end users a monthly charge to recover some or all of the revenues they are permitted to recover from reductions in intercarrier compensation rates. To permit the Commission and state commissions to monitor compliance with the revised intercarrier compensation rules and for incumbent LECs to receive CAF ICC support must also certify with its 2012 annual access tariff filing and on April 1st of each subsequent year that it has complied with the procedures for calculating its eligible recovery, the calculation of the appropriate access recovery charge, and that it is eligible to receive the CAF ICC support requested.

The Commission estimates that 1,340 incumbent LECs annually will have to file the required data with the FCC, the relevant station commissions, and USAC. We also estimate that those incumbent LECs will have to make the above new certification annually.

The information collected through these data collections will be used by the Commission and state commissions to determine whether the revised intercarrier compensation rules are being complied with and the services offered are just and reasonable as the Act requires. The data will also provide the Commission with the information to develop procedures to transition remaining intercarrier switched access rates to bill-and-keep. USAC will use the data to ensure that the CAF ICC payments it makes are appropriate under the revised rules. The certification is a further step in the compliance and monitoring process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–74 Filed 1–6–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 8, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at (202) 418–0214.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0813.

Title: Section 20.18, Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 47,031 respondents; 47,031 responses.

Estimated Time per Response: 4.2142416 hours (average).

Frequency of Response: On occasion and annual reporting requirements, 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. sections 151, 154(i), 303(f), and (r), 309, 316 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 198,200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements).

There is no change in the Commission's previous burden estimates.

The notification requirement on Public Safety Answer Points (PSAPs) will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTY and dispatch notification requirements will be used to avoid customer confusion as to the capabilities of their handsets in reaching help in emergency situations, thus minimizing the possibility of critical delays in response time.

The annual TTY reports will be used to monitor the progress of TTY technology and thus capability. Consultations on the specific meaning assigned to pseudo-Automatic Location Identification (ALI) are appropriate to ensure that all parties are working with the same information. Coordination between carriers and state and local entities to determine the appropriate PSAPs to receive and respond to E911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the wireless caller. The deployment schedule that must be submitted by carriers seeking a waiver of Phase I or Phase II deployment schedule will be used by the Commission to guarantee that the rules are enforced in as timely manner as possible within technological

constraints. In addition, a wireless carrier must implement E911 service within the six-month period following the date of the PSAP's request. If the carrier challenges the validity of the request, the request will be deemed valid if the PSAP making the request provides the following information:

(a) *Cost Recovery:* The PSAP must demonstrate that a mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements.

(b) *Necessary Equipment:* The PSAP must provide evidence that it has ordered the equipment necessary to receive and utilize the E911 data elements; and

(c) *Necessary Facilities:* The PSAP must demonstrate that it has made a timely request to the appropriate local exchange carrier (LEC) for the necessary trunking and other facilities to enable E911 data to be transmitted to the PSAP.

This collection is needed to ensure that they are ready to receive E911 Phase I or Phase II information at the time that wireless carrier's obligation to deliver that information becomes due. This will reduce the possibility of both carriers and PSAPs investing money before the PSAP is actually E911 capable.

OMB Control Number: 3060–1155.

Title: Sections 15.713, 15.714, 15.715 and 15.717, TV White Space Broadcast Bands.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,000 respondents; 2,000 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirements, recordkeeping 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. sections 154(i), 302, 303(c), 303(f) and 307 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for a revision of this information collection.

The Commission revised this information collection to add questions about prefill applications and the number of available channels; and to make clarifications for some existing questions to the on-line database screens. This is being done to make completion of the form easier for the respondents.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–75 Filed 1–6–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATES: *Date and Time: Thursday, January 12, 2012 at 10 a.m.*

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This Meeting will be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of December 15, 2011.

Draft Advisory Opinion 2011–24: Louder Solutions, LLC, d/b/a StandLouder.com.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley E. Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–230 Filed 1–5–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *BB&T Corporation, Winston-Salem, North Carolina,* to acquire 100 percent of the voting shares of BankAtlantic, Fort Lauderdale, Florida, and thereby engage in operation a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 4, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–127 Filed 1–6–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public meeting, followed by a closed portion of the meeting under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. 552b(c).

DATES: The February 2, 2012 NBSB public meeting is tentatively scheduled

from 10:30 a.m. to 12:30 p.m. A portion of the public meeting will be closed and is tentatively scheduled from 2 p.m. to 5 p.m. The agenda is subject to change as priorities dictate. Please check the NBSB Web site for the most up-to-date information on the meeting.

ADDRESSES: Omni Shoreham Hotel, Palladian Ballroom, 2500 Calvert Street NW. (at Connecticut Ave.) Washington, District of Columbia 20008. To attend by teleconference, call 1–(866) 395–4129, pass-code ''ASPR.'' Please call 15 minutes prior to the beginning of the conference call to facilitate attendance. Pre-registration is required for in person public attendance. Individuals who wish to attend the meeting in person should send an email to *NBSB@HHS.GOV* with ''NBSB Registration'' in the subject line.

FOR FURTHER INFORMATION CONTACT: MacKenzie Robertson, Acting Executive Director, NBSB, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services; (202) 260–0447; fax (202) 205–8508; Email: *NBSB@HHS.GOV.*

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (*42 U.S.C. 247d–7f*) and section 222 of the Public Health Service Act (*42 U.S.C. 217a*), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary and/or the Assistant Secretary for Preparedness and Response on other matters related to public health emergency preparedness and response.

Background: A portion of this public meeting will be dedicated to swearing in the seven new voting members who will replace the members whose 4-year terms will expire on January 31, 2012. The Board will also be asked to review and evaluate the 2012 Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Strategy and Implementation Plan (SIP). Until a final document is approved by the Secretary of the Department of Health and Human Services (HHS), the development of PHEMCE SIP requires consideration and discussion of procurement-sensitive information that should not be released to the public prior to the Secretary's final decision. Premature public disclosure of the draft PHEMCE SIP would limit the Secretary's decision-making ability to effectively prioritize HHS expenditures on critical medical countermeasures. Therefore, the Board's deliberations on the new task will be conducted in closed session in accordance with provisions set forth under exemption 9(B) of the Government in Sunshine Act, 5 U.S.C. section 552b(c), and with approval by the Assistant Secretary for Preparedness and Response.

Availability of Materials: The meeting agenda and materials will be posted on the NBSB Web site at *http://www.phe.gov/Preparedness/legal/boards/nbsb/Pages/default.aspx* prior to the meeting.

Procedures for Providing Public Input: Any member of the public providing oral comments at the meeting must sign-in at the registration desk and provide his/her name, address, and affiliation. All written comments must be received prior to January 26, 2012 and should be sent by email to *NBSB@HHS.GOV* with ''NBSB Public Comment'' as the subject line. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should email *NBSB@HHS.GOV.*

Dated: January 3, 2012.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2012–152 Filed 1–6–12; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0454]

Privacy Act of 1974; Report of an Altered System of Records, Including Addition of Routine Uses to an Existing System of Records; Bioresearch Monitoring Information System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of an altered system of records.

SUMMARY: The Food and Drug Administration (FDA) is announcing an alteration to an existing System of Records (System) titled ''Bioresearch Monitoring Information System, HHS/FDA'' (System No. 09–10–0010). Among other updates, this alteration adds new routine uses for disclosures of certain relevant information to Agencies, authorities, and organizations with responsibilities related to clinical investigations and/or clinical investigators; persons who require access to records to perform services for FDA; and individual research subjects.

DATES: This notice will be effective without further notice on February 8, 2012 unless modified by a subsequent notice making changes in response to public comments. FDA invites comments on all parts of the systems notice. Comments must be received on or before February 8, 2012. See **ADDRESSES** for information about submission of comments.

ADDRESSES: You may submit comments identified by Docket No. FDA–2011–N–0454 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* (301) 827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0454 for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Pfaender, Office of Good Clinical Practice, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993–0002, (301) 796–8340.

SUPPLEMENTARY INFORMATION:

I. Background

The Bioresearch Monitoring Information System provides controls to

ensure that clinical investigators meet the requirements of the relevant statutes and regulations governing FDA-regulated products. This System also supports the effective performance of activities necessary for the conduct of FDA's bioresearch monitoring program.

II. Description of Changes to System of Records

We have changed, or altered, the Bioresearch Monitoring Information System as follows:

(a) General necessary updates to make the System current (e.g., adding the Center for Tobacco Products and the Office of Good Clinical Practice, updating addresses and revising citations).

(b) Adding to the categories of records in the System: clinical investigator financial arrangements with or interests in a study sponsor, because this information may be included in this System.

(c) Deleting an unnecessary routine use authorizing disclosure to congressional offices in response to inquires from constituents who authorize disclosure by written consent. This routine use is unnecessary because the Privacy Act and FDA regulations permit disclosure upon prior written consent by the individual who is the subject of the records. (5 U.S.C. 552a(b), 21 CFR 21.70(a)(2) and 21.72).

(d) Amending part 1 of former routine use 1 to provide for disclosure to Federal, State, and local Agencies; government institutions; State licensing authorities; foreign governments/Agencies; international organizations; and non-governmental regulatory bodies of a foreign country. Such disclosure must be relevant to that entity's oversight, investigative, regulatory, licensing, or enforcement responsibilities for clinical investigations and/or clinical investigators. This includes any referrals related to potential violations of law, as had been provided for under part 1 of former routine use 1 (routine use 1).

(e) Amending part 2 of former routine use 1 to provide for disclosure to sponsors, institutional review boards, and other non-government entities if the information disclosed is relevant to the receiving entity's responsibility for the initiation, oversight, monitoring, compliance, or other regulatory requirement associated with the conduct of clinical investigations or oversight of a clinical investigator (routine use 2).

(f) Providing for disclosure to a research subject of information from a research misconduct proceeding that may have implications for that subject's rights, safety, or welfare, or participation in a research study (routine use 3).

(g) Providing for disclosure to the public of information related to a clinical investigator's financial arrangements with or interests in a study sponsor, to the extent disclosure is not an unwarranted invasion of personal privacy or is not otherwise protected from disclosure under FDA's regulations or applicable statutes (routine use 4).

(h) Providing for disclosure to the public of regulatory information and/or correspondence, including untitled letters, Notice of Initiation of Disqualification Proceedings and Opportunity to Explain letters, Notice of Opportunity for Hearing letters, and warning letters issued to clinical investigators, and summary information from inspections of clinical investigators involved in FDA-regulated research, to the extent disclosure is not an unwarranted invasion of personal privacy or is not otherwise protected from disclosure under FDA's regulations or applicable statutes (routine use 5).

(i) Providing for disclosure to persons who require access to records in order to perform services for FDA, such as serving on FDA research misconduct inquiry committees (routine use 6).

(j) Providing for disclosure to the appropriate Federal Agencies and HHS contractors in responding to a breach of the security or confidentiality of information in this System (routine use 7).

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

The following is a copy of the altered System of Records. FDA invites comments on all parts of the System of Records (see section III of this document for information about submission of comments):

System No. 09–10–0010

SYSTEM NAME

Bioresearch Monitoring Information System, HHS/FDA.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATIONS

Center for Biologics Evaluation and Research, Office of Compliance and Biologics Quality, Bioresearch Monitoring Team (refer to *http://www.fda.gov* for address specifics).

Center for Devices and Radiological Health, Office of Compliance, Division of Bioresearch Monitoring (refer to *http://www.fda.gov* for address specifics).

Center for Drug Evaluation and Research, Office of Compliance, Division of Scientific Investigations (refer to *http://www.fda.gov* for address specifics).

Center for Food Safety and Applied Nutrition, Office of Food Additive Safety, (refer to *http://www.fda.gov* for address specifics).

Office of Regulatory Affairs, Office of Enforcement (refer to *http://www.fda.gov* for address specifics), and Regional Field Offices (refer to *www.fda.gov* for address specifics).

Center for Tobacco Products (refer to *http://www.fda.gov* for address specifics).

Center for Veterinary Medicine, Division of Compliance, Bioresearch Monitoring Program (refer to *http://www.fda.gov* for address specifics).

Office of Good Clinical Practice, Office of the Commissioner (refer to *http://www.fda.gov* for address specifics).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

This notice applies to clinical investigators who are conducting, or have conducted, clinical investigations of products regulated by FDA.

CATEGORIES OF RECORDS IN THE SYSTEM

This system includes records, regardless of format (e.g., electronic, hard copy, scanned), pertaining to clinical investigators who conduct research of products regulated by FDA, for example a clinical investigation that supports an application for a research or marketing permit for an FDA-regulated product. Records contain name, education, professional qualifications and background, and information on studies conducted. Records that contain information about certain financial arrangements with or interests in study sponsors may also be included in this system.

This system also contains records created or collected during inspections or investigations of clinical investigators for possible violations of statutes or regulations governing clinical investigations of FDA-regulated products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

The authorities for maintaining this system are: Section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)(3)), 21 CFR part 312; Section 520(g) of the FD&C Act (21 U.S.C. 360j), 21 CFR part 812; Sections 512(j) and (l)(1) of the FD&C Act (21 U.S.C. 360b(j) and (l)(1)), 21 CFR part 511; Sections 409 and 721 of the FD&C Act (21 U.S.C. 348 and 379e), 21 CFR part 71, 21 CFR part 171; Section 412 of the FD&C Act (21 U.S.C. 350a); Section 910 of the FD&C Act (21 U.S.C. 387j); Section 351 of the Public Health Service Act (42 U.S.C. 262).

PURPOSES

The purposes of this system are to:

1. Support regulatory or procedural controls to ensure that clinical investigators meet requirements of the relevant statutes and regulations governing clinical investigations of FDA-regulated products.

2. Support the effective performance of activities necessary for the conduct of the FDA's bioresearch monitoring program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

The Privacy Act lists the conditions of disclosure under 5 U.S.C. 552a(b). Among the permitted disclosures is, ''to those officers and employees of the Agency which maintains the record who have a need for the record in the performance of their duties'' (5 U.S.C. 552a(b)(1)). For this system of records, this would include disclosure to appropriate FDA and Department of Health and Human Services (HHS) employees.

Permitted disclosures also include routine uses that are listed in the notice of the system of records. (See 5 U.S.C. 552a(b)(3)). The Privacy Act defines ''routine use'' as ''with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected'' (5 U.S.C. 552a(a)(7)). See also FDA's Privacy Act Record Systems regulations, defining ''routine use'' as, ''use outside the Department of Health and Human Services that is compatible with the purpose for which the records were collected and described in the [System of Records] notice * * *.'' (21 CFR 21.20(b)(5)).

The routine uses for this system of records are listed in the following numbered items.

1. Disclosure may be made to Federal, State, and local Agencies; government institutions; state licensing authorities; foreign governments/Agencies; international organizations; and non-governmental regulatory bodies of a foreign country. Such disclosure must be relevant to that entity's oversight, investigative, regulatory, licensing, or enforcement responsibilities for clinical investigations and/or clinical investigators. This includes referrals for investigation and possible enforcement action to the U.S. Department of Justice and other appropriate Agencies, authorities, and organizations.

2. Disclosure may be made to sponsors, institutional review boards, and other non-government entities if the information disclosed is relevant to the receiving entity's responsibility for the initiation, oversight, monitoring, compliance, or other regulatory requirement associated with the conduct of clinical investigations and/or oversight of clinical investigators.

3. Disclosure may be made to an individual research subject of information obtained or developed through a research misconduct proceeding if, in FDA's judgment, the information may have implications for that subject's rights, safety, or welfare, or participation in a research study.

4. Disclosure may be made to the public of information related to a clinical investigator's financial arrangements with or interest in a study sponsor, to the extent disclosure is not an unwarranted invasion of personal privacy or is not otherwise protected from disclosure under FDA's regulations or applicable statutes. Examples of the financial arrangements that FDA may disclose include but are not limited to outcome payments (i.e., where the payment to the clinical investigator is dependent on the outcome of the study) and proprietary interests (e.g., where the clinical investigator holds a patent).

5. Disclosure may be made to the public of regulatory information and/or correspondence, including untitled letters, Notice of Initiation of Disqualification Proceedings and Opportunity to Explain (NIDPOE) letters, Notice of Opportunity for Hearing (NOOH) letters, and warning letters issued to clinical investigators, and summary information from inspections of clinical investigators, to the extent disclosure is not an unwarranted invasion of personal privacy or is not otherwise protected from disclosure under FDA's regulations or applicable statutes.

6. Disclosure may be made to persons who require access to the records to perform services for FDA, for example, persons appointed to serve on FDA research misconduct inquiry committees or investigative committees, and FDA contractors, if such persons need access to the records to perform their assigned task. Provided, however, in each case FDA determines whether limitations on disclosures or confidentiality agreements are needed to protect the privacy of respondents, complainants, witnesses, research subjects or others who may be identified in the records to be disclosed; and FDA determines that the disclosure is for a purpose compatible with the purpose for which FDA collected the records.

7. Disclosure may be made to appropriate Federal Agencies and HHS contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

8. Disclosure may be made to the U.S. Department of Justice (DOJ) when: (a) the Agency or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation and, by careful review, the Agency determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ is therefore deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records.

9. Disclosure may be made to a court or other tribunal, when: (a) The Agency or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (d) the United States Government, is a party to the proceeding or has an interest in such proceeding and, by careful review, the Agency determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Files may be maintained in various formats including hard copy paper in manual files, microfilm, magnetic disk or tape, computer disks, hard drives,

and file servers and other types of data storage devices.

RETRIEVABILITY:

Records may be indexed by name or code number, but can be retrieved by manual or computer search of the case-tracking system using the name of the individual.

SAFEGUARDS:

1. *Authorized users:*

Records in FDA's system are available to the Commissioner of Food and Drugs, FDA's System Managers, and to other appropriate FDA and HHS officials when there is a need to know in the performance of their duties. All authorized users are informed that the records are confidential and are not to be further disclosed.

2. *Procedural safeguards:*

Access is strictly controlled by FDA's System Managers in compliance with the Privacy Act and this system notice. Access to the records is limited to ensure confidentiality. All questions and inquiries from any party should be addressed to FDA's Office of Good Clinical Practice.

3. *Physical safeguards:*

All records (such as diskettes, computer listings, or documents) are kept in a secured area, locked rooms, and locked building. The facility has a 24-hour guard service, and access to the building is further controlled by an operational card key system. Access to the files, which are generally hard copy, are limited to a subset of persons with general access to the building. Access to individual offices is controlled by simplex locks. Records are kept in locked file cabinets in a room that is locked during non-working hours. Access to this room is restricted to specific personnel. Access to computer files is strictly limited through passwords and user-invisible encryption. Special measures commensurate with the sensitivity of the record are taken to prevent unauthorized copying or disclosure of the records.

RETENTION AND DISPOSAL:

The records are maintained in accordance with FDA's Records Control Schedule, applicable General Records Schedule (accessions), and disposition schedule approved by the National Archives and Records Administration (cases).

SYSTEM MANAGERS AND ADDRESSES:

Division of Inspections and Surveillance, Center for Biologics Evaluation and Research, Office of Compliance and Biologics Quality (refer to *http://www.fda.gov* for address specifics).

Division of Bioresearch Monitoring, Center for Devices and Radiological Health, Office of Compliance (refer to *http://www.fda.gov* for address specifics).

Division of Scientific Investigations, Center for Drug Evaluation and Research, Office of Compliance (refer to *http://www.fda.gov* for address specifics).

Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (refer to *http://www.fda.gov* for address specifics).

Office of Enforcement, Office of Regulatory Affairs (refer to *http://www.fda.gov* for address specifics), and Regional Field Offices (refer to *http://www.fda.gov* for address specifics).

Center for Tobacco Products (refer to *http://www.fda.gov* for address specifics).

Division of Compliance, Center for Veterinary Medicine, Bioresearch Monitoring Program (refer to *http://www.fda.gov* for address specifics).

Office of Good Clinical Practice, Office of the Commissioner (refer to *http://www.fda.gov* for address specifics).

NOTIFICATION PROCEDURES:

In accordance with 21 CFR part 21 subpart D, an individual may submit a request to the FDA Privacy Act Coordinator, with a notarized signature, to confirm whether records exist about that individual. Requests should be directed to the FDA Privacy Act Coordinator (refer to *http://www.fda.gov* for the address specifics). Investigative records are exempt from this provision (see the following sentences: Records Exempted from Certain Provisions of the Act). In addition, some records may be exempt under 5 U.S.C. 552a(d)(5), if they are ''compiled in reasonable anticipation of a civil action or proceeding.'' See also 21 CFR 21.41. Requests may be mailed to the FDA Privacy Act Coordinator (refer to *http://www.fda.gov* for the address specifics).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should specify the record contents being sought. Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the system manager. If access is denied to requested records, an appeal may be made to the FDA Commissioner. A request can also be made for an accounting of disclosures that have been made of a record, if any.

CONTESTING RECORD PROCEDURES:

In accordance with 21 CFR 21.50, contact the FDA Privacy Act Coordinator (refer to *http://www.fda.gov*), and reasonably identify the record, specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. As stated previously, investigative records are exempt from this provision (see the following paragraphs of this document: Records Exempted from Certain Provisions of the Act). In addition, some records may be exempt under 5 U.S.C. 552a(d)(5) if they are ''compiled in reasonable anticipation of a civil action or proceeding.''

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained. Some material is obtained from third parties (*e.g.,* a study sponsor, publication, or institutional review board), or is developed by FDA.

RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Investigatory records compiled for law enforcement purposes in this system are exempt from the notification, access, correction and amendment provisions of the Privacy Act (21 CFR 21.61).

Dated: January 4, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–114 Filed 1–6–12; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0975]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet on January 18–19, 2012 in Washington, DC to discuss various issues relating to national maritime security. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, January 18, 2012 from 9 a.m. to 3 p.m. and Thursday, January 19, 2012 from 9 a.m. to 12 p.m. This

meeting may close early if all business is finished.

All written material and requests to make oral presentations should reach the Coast Guard on or before January 9, 2012.

ADDRESSES: The Committee will meet at the American Bureau of Shipping, 1400 Key Blvd., Suite 800, Arlington, VA 22209. Seating is very limited, members of the public wishing to attend should register with Mr. Ryan Owens, Alternate Designated Federal Official (ADFO) of NMSAC, telephone (202) 372–1108 or *ryan.f.owens@uscg.mil* no later than January 9, 2012. Additionally, this meeting will be broadcasted via a web enabled interactive online format and teleconference.

To participate via teleconference, dial (866) 717–0091, the pass code to join is 3038389#. Additionally, if you would like to participate in this meeting via the online web format, please log onto *https://connect.hsin.gov/r11254182* and follow the online instructions to register for this meeting.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit written comments no later than January 9, 2012, and identified by docket number [USCG–2011–0975] using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instruction for submitting comments.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay delivery of mail.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is (202) 366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number [USCG–2011–0975]. All submissions received will be posted without alteration at *www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Docket: Any background information or presentations available prior to the meeting will be published in the docket. For access to the docket to read background documents or submissions received by the NMSAC, go to *http://www.regulations.gov,* insert ''USCG–2011–0975) in the ''Keyword'' box, and then click ''Search''.

Public comment period will be held during the meetings on January 18, 2012, from 2 p.m. to 3 p.m., and January 19, 2012 from 11 a.m. to 12 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, ADFO of NMSAC, 2100 2nd Street SW., Stop 7581, Washington, DC 20593–7581; telephone (202) 372–1108 or email *ryan.f.owens@uscg.mil.* If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. NMSAC operates under the authority of 46 U.S.C. 70112. NMSAC provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to national maritime security.

Agenda of Meeting

Day 1

The agenda for the Committee meeting is as follows:

(1) Maritime Domain Awareness and Information Sharing. The Committee will hold a discussion and will be tasked with developing guidelines and recommendations for the Coast Guard in enhancing information sharing between the maritime industry and the Federal Government;

(2) Maritime Transportation Security Act/Chemical Facility Anti-Terrorism Standards Harmonization. The Committee will receive a brief and offer recommendations on the harmonization efforts of the Coast Guard and the Department of Homeland Security for these two regulatory programs;

(3) Transportation Worker Identification Credential. The TWIC working group will provide an update on the implementation of the TWIC program from the industry perspective. The Transportation Security Administration will also provide an update on the development of TWIC readers;

(4) Public comment period.

Day 2

(1) Maritime Transportation Security Act (MTSA). The Committee will be briefed on upcoming regulatory actions associated with updates to MTSA;

(2) Global Supply Chain Security Initiative. Per the SAFE Port Act (Pub. L. 109–347) NMSAC continues to be consulted in regards to the Global Supply Chain Security Initiative. The Committee will receive an update on this initiative;

(3) Requirements for vessel guards while in port. NMSAC will review and provide comment on requirements for vessels to post or contract for guards while in US ports;

(4) Underwater Terrorism Preparedness Program. NMSAC will receive a brief on the Coast Guard Underwater Terrorism Preparedness Program;

(5) Public comment period.

Dated: December 29, 2011.

P.F. Thomas,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. 2012–105 Filed 1–6–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1032]

Houston/Galveston Navigation Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). This Committee provides advice and makes recommendations to the Coast Guard on matters relating to the safe transit of vessels and products through Galveston Bay, and to and from the Ports of Galveston, Houston, Texas City, and Galveston Bay.

DATES: Applicants must send a cover letter describing their interest, reasons for application, and qualifications, and should enclose a complete professional biography or resume to CDR Michael Zidik, the Alternate Designated Federal Officer (ADFO), on or before February 1, 2012.

ADDRESSES: Applicants must send their cover letter and resume to the following address: USCG Sector Houston-Galveston, Waterway Management Division, 9640 Clinton Drive, Houston, TX 77029; or by faxing (713) 671–5156; or by emailing to *Michael.S.Zidik@uscg.mil*.

This notice is available in our online docket, USCG–2011–1032, at *http://www.regulations.gov* by inserting USCG–2011–1032 in the ''Keyword'' box, and then clicking ''Search''. Please do not post your resume on this site.

FOR FURTHER INFORMATION CONTACT: Commander Michael Zidik, ADFO of HOGANSAC at (713) 671–5164; fax (713) 671–5156; or email at *Michael.S.Zidik@uscg.mil* or Lieutenant Margaret Brown at (713) 678–9001; or email at *Margaret.A.Brown@uscg.mil*.

SUPPLEMENTARY INFORMATION: HOGANSAC is an advisory committee chartered under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). HOGANSAC was established under Section 18 of *the Coast Guard Authorization Act of 1991,* (Pub. L. 102–241)and provides advice and recommendation to the Coast Guard on matters relating to the safe transit of vessels and products through Galveston Bay and to and from the Ports of Galveston, Houston, Texas City, and Galveston Bay.

The Committee is expected to meet at least three times a year.

We will consider applications for three positions.

(a) One at-large member who may represent a particular interest group but who utilize the port facilities at Galveston, Houston, and Texas City.

(b) One member representing labor organizations which load and unload cargo at the Ports of Galveston and Houston.

(c) One member from organizations that represent ship owners, stevedores, shipyards, or shipping organizations domiciled in the State of Texas.

Each HOGANSAC Committee member serves a term of office of up two years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary or reimbursement of travel expenses, or other compensation from the Federal Government.

Registered lobbyists are not eligible to serve on federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the *Lobbying Disclosure Act of 1995* (Pub. L. 110–81, as amended).

In support of the Coast Guard policy on gender and ethnic nondiscrimination, we encourage qualified men and women of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

Dated: December 14, 2011.

James Whitehead,

Captain, U.S. Coast Guard, Designated Federal Officer.

[FR Doc. 2012–107 Filed 1–6–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2011–N239; FXRS12650800000S3–112–FF08R00000]

San Pablo Bay National Wildlife Refuge, Sonoma, Napa, and Solano Counties, CA; Final Comprehensive Conservation Plan and Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final Comprehensive Conservation Plan (CCP) and finding of no significant impact (FONSI) for the San Pablo Bay National Wildlife Refuge (Refuge). In the CCP, we describe how we will manage the Refuge for the next 15 years.

DATES: The CCP and FONSI are available now. The FONSI was signed on October 5, 2011. Implementation of the CCP may begin immediately.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web Site: Download a copy of the document(s) at *http://www.fws.gov/cno/refuges/SanPablo/SanPablo.cfm.*

Email: sfbaynwrc@fws.gov. Include ''San Pablo Bay CCP'' in the subject line of the message.

Fax: Attn: Winnie Chan, (510) 792–5828.

Mail: U.S. Fish and Wildlife Service, San Francisco Bay NWR Complex, 9500 Thornton Avenue, Newark, CA 94560.

In-Person Viewing or Pickup: Copies of the Final CCP and FONSI may also be viewed at the San Francisco Bay National Wildlife Refuge Complex, 1 Marshlands Road, Fremont, CA 94536 (510) 792–0222) or San Pablo Bay National Wildlife Refuge in Petaluma, CA (call (707) 769–4200 for directions).

Local Library: The final document is also available at the John F. Kennedy Library, 505 Santa Clara, Vallejo, CA 94590.

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Planning Team Leader, at (510) 792–0222 (see **ADDRESSES**), or Don Brubaker, Refuge Manager, at (707) 769–4200.

SUPPLEMENTARY INFORMATION:

Background

The San Pablo Bay National Wildlife Refuge was established in 1970 under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Conservation Act (16 U.S.C. 715d), and the Transfer of Certain Real Property for Wildlife Conservation Purposes Act of May 19, 1948 (16 U.S.C. 667d; Pub. L. 80–537), as amended. The 16,490-acre Refuge, located in Sonoma, Napa, and Solano Counties, California, consists of several noncontiguous units on the northernmost edge of San Pablo Bay. The Refuge was established to provide habitat for migratory birds and endangered species.

We announce our decision and the availability of the FONSI for the final CCP for San Pablo Bay in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the environmental assessment (EA) that accompanied the draft CCP.

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We intend to review and update the CCP at least every 15 years in accordance with the Administration Act.

Our Draft CCP and Environmental Assessment (EA) were available for a 30-day public review and comment period, which we announced via several methods, including press releases,

updates to constituents, and a **Federal Register** notice (75 FR 39702; July 12, 2010). The Draft CCP/EA identified and evaluated three alternatives for managing the Refuge for the next 15 years.

Under Alternative A (No Action), management would continue unchanged. Under Alternative B, the Service would develop an inventory and monitoring program; expand tidal restoration and enhancement activities for the benefit of migratory birds, endangered species, and other native wildlife; improve and expand visitor services by developing new public access locations; develop shoreline fishing locations; and provide some additional environmental education programs. Alternative C, which was identified as the preferred alternative, would include all actions in Alternative B, and would also emphasize wildlife management by studying population health and developing population goals for wildlife; provide greater interpretive opportunities; and substantially expand the environmental education program.

We received seven letters on the Draft CCP and EA during the review and comment period. Comments focused upon cultural resources, habitat management and restoration, invasive plants, public access, and mosquito management. We incorporated comments we received into the CCP when appropriate, and we responded to the comments in an appendix to the CCP. In the FONSI, we selected Alternative C for implementation. The FONSI documents our decision and is based on the information and analysis contained in the EA.

Under the selected alternative, the Service will expand both natural resource management and visitor services opportunities on the Refuge. An inventory and monitoring program will be developed, as well as wildlife population goals. In addition to expanded tidal restoration and enhancement activities, additional habitat management activities include improving hydrological connectivity of tidal marsh habitats. Priorities will also be developed for the conservation and restoration of sub-tidal habitat. Visitor service opportunities will be expanded considerably with interpretation and environmental education opportunities. In addition, wildlife observation and fishing programs will be improved and/or expanded.

The selected alternative best meets the Refuges' purposes, vision and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. Based on the associated environmental assessment, this alternative is not expected to result in significant environmental impacts and therefore does not require an environmental impact statement.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2012–130 Filed 1–6–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9310000.L10200000.EE0000. LXSSD0010000]

Notice of Intent To Prepare an Environmental Impact Statement To Address Grazing Permit Renewals in the Jump Creek, Succor Creek, and Cow Creek Watersheds in the Owyhee Field Office of the Boise District, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (NEPA), as amended, the Bureau of Land Management (BLM) Owyhee Field Office in Marsing, Idaho intends to prepare an environmental impact statement (EIS), and by this notice, is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. We request that comments should be submitted within 30 days of the date of publication of this notice. The date(s) and location(s) of any scoping meeting(s) will be announced at least 15 days in advance through local media and the BLM Web site, *http://www.blm.gov/id.* In order to be considered in the draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later.

ADDRESSES: You may submit comments and issues related to the Jump Creek, Succor Creek, and Cow Creek Watersheds Grazing Permit Renewal EIS by any of the following methods:

- *Web site: http://www.blm.gov/id/st/en/fo/owyhee/owyhee_grazing_group.html.*
- *Email: NPR_EIS@blm.gov.*
- *Fax:* (208) 373–3805.
- *Mail:* Bureau of Land Management, 1387 S. Vinnell Way, Boise ID 83709, Attention: Jake Vialpando, Project Manager.

Documents pertinent to this proposal may be examined at the Owyhee Field Office; the BLM Boise District Office, 3948 Development Ave., Boise ID 83705; and the BLM Idaho State Office, 1387 S. Vinnell Way, Boise ID 83709.

FOR FURTHER INFORMATION CONTACT: and/or to have your name added to our mailing list, contact Jake Vialpando, Project Manager, telephone (208) 373–3814, *email jvialpando@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Owyhee Field Office in Marsing, Idaho, intends to prepare an EIS to address grazing permit renewal requests in the Jump Creek, Succor Creek, and Cow Creek areas, and announces the beginning of the scoping process. The area covered by the permit renewal requests is located in Owyhee County, Idaho, and encompasses approximately 120,000 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the EIS, including the alternatives. The agency seeks public input to identify issues related to grazing permit renewals that have been proposed for those areas. Preliminary issues have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. Some key issues that have already been identified involve the effects of livestock grazing on Greater sage-grouse and its habitat, as well as the potential for disease transmission between domestic and bighorn sheep. In addition to livestock grazing, a variety of other multiple uses exist within this area, including: year-long recreation activities, particularly hiking, boating, fishing, hunting, and off-road vehicle use; wild horse management; potential wind energy development and electrical transmission line development.

The Owyhee Field Office will consult with the Shoshone-Paiute Tribes and other parties, as applicable, on this action during regular consultation proceedings and briefings. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to

participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. The BLM will also brief county commissioners, Congressional delegations and grazing permittees during the EIS process.

You may submit comments on issues and planning criteria in writing to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, please submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later. 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The public is also encouraged to help identify any other management questions and concerns that should be addressed in the EIS.

The BLM will use an interdisciplinary approach to develop the EIS in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the NEPA process: Range management, wildlife biology, archaeology, riparian, soils, and outdoor recreation.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Loretta Chandler,

Field Manager, BLM Owyhee Field Office.

[FR Doc. 2012–125 Filed 1–6–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L51100000.GN0000.LVEMG11CG230]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Copper Flat Mine Plan of Operations, Sierra County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Las Cruces District Office, Las Cruces, New Mexico, intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until February 8, 2012. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/nm/st/en/fo/Las_Cruces_District_Office.html*. To be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Copper Flat EIS Project by any of the following methods:

- *Email: dhaywood@blm.gov.*
- *Fax:* (575) 525–4412.
- *Mail:* BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005.

Documents pertinent to this proposal may be examined at the Las Cruces District Office.

FOR FURTHER INFORMATION CONTACT: Michael Smith, Geologist; telephone (575) 525–4421; address 1800 Marquess Street, Las Cruces, NM 88005 or by email *michaelsmith@blm.gov* and to have your name added to the mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM Las Cruces District Office has received a Mine Plan of Operations (Mine Plan) from the New Mexico Copper Corp. to re-start the Copper Flat Mine located in Sierra County, New Mexico. The proposed mine is located approximately 4 miles north-northeast of the town of Hillsboro, New Mexico. Lands involved in the mine include parts of the following sections:

New Mexico Principal Meridian

T. 15 S., R. 6 W.,
Sec. 31.
T. 15 S., R. 7 W.,
Secs. 25, 26, 35 and 36.

Mining, ore processing, and related activities would occur on both private land and public domain administered by the BLM. The proponent currently holds active mining claims over public domain land included in the proposed operation. The estimated project duration is 27 years from site construction to mine reclamation and closure. Mining at the existing open pit would be completed using standard multiple-bench methods. The pit would eventually widen to approximately 2,500 by 2,500 feet and deepen to 900 feet. Ore from the pit would be drilled, blasted, loaded and hauled to a planned processing facility immediately east of the pit. At this facility, the ore would be crushed and ground and copper and molybdenum minerals would be separated and concentrated using standard flotation techniques. Mineral concentrates would be transported by truck and rail to be processed offsite; onsite smelting or refining is not included in this proposal. Waste rock created during operations would be banked primarily on public domain land, and tailings would be disposed of into an expanded, existing tailings impoundment. Water for the proposed operation would be obtained from a well field located on BLM-administered land approximately 8 miles east of the mine in:

New Mexico Principal Meridian

T. 15 S., R. 5 W.,
Secs. 30 and 31.

Water would be piped to the proposed operation through an existing pipeline which roughly parallels the existing highway (New Mexico State Route 152). The total estimated disturbance on public domain land would be 745 acres. Reclamation would consist of removing processing equipment from Federal land, and restoring and seeding waste rock dumps and other disturbed areas. The BLM and the New Mexico Department of Energy, Minerals and Natural Resources would bond the proponent for site reclamation prior to granting authorization.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues:

1. Water use and effects on surface and subsurface hydrology;
2. Water quality effects and water quality protection;
3. Traffic;
4. Cultural Resources and Native American Religious Concerns;

5. Threatened, Endangered and Special Status Species;

6. Livestock grazing; and

7. Reclamation and post-mining land use.

The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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.

Authority: 40 CFR 1501.7.

Jesse Juen,

Associate State Director.

[FR Doc. 2012–128 Filed 1–6–12; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560.L58530000.ES0000.241A; N–84625; 12–08807; MO# 4500025699; TAS: 14X5232]

Notice of Realty Action: Classification for Lease and/or Subsequent Conveyance for Recreation and Public Purposes of Public Land in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: In accordance with Section 7 of the Taylor Grazing Act and Executive Order Number 6910, the Bureau of Land Management (BLM) has examined and found suitable for classification for lease and/or subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 7.5 acres of public land in the City of Las Vegas, Clark County, Nevada. The State of Nevada proposes to use the land for a State office building.

DATES: Interested parties may submit written comments regarding the proposed classification of the land for lease and/or subsequent conveyance of the land, and the environmental assessment (EA), until February 23, 2012.

ADDRESSES: Send written comments to the BLM Las Vegas Field Manager, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130, or email: *DDickey@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dorothy Jean Dickey, (702) 515–5119, or *DDickey@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The State of Nevada has filed an application to develop the following described land as a State office building with related facilities near Flamingo Road and El Capitan Way in Las Vegas:

Mount Diablo Meridian

T. 21 S., R. 60 E.,
Sec. 17, E½SW¼SW¼SE¼, and SW¼SW¼SW¼SE¼.

The area described contains 7.5 acres, more or less, in Clark County.

The State office building will consist of approximately 60,000 square feet of office and support space. Related facilities include a parking lot, landscaping, lighting, utilities, and ancillary equipment. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–84625, which is located in the BLM Las Vegas Field Office at the above address.

The land is not required for any Federal purpose. The lease and/or subsequent conveyance are consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The State of Nevada, a qualified applicant under the R&PP Act, has not applied for more than the 640-acre limitation for public purpose uses in a year, and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and/or subsequent conveyance of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulations, prior to patent issuance, a holder of any Right-of-Way within the lease area may be given the opportunity to amend the Right-of-Way for conversion to a new term, including perpetuity, if applicable.

The lease and/or subsequent conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following terms, conditions, and reservations to the United States:

1. A Right-of-Way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. Valid existing rights;

4. Right-of-Way N–59691 for paved road and drainage, spandrels, bus turnouts, curb, gutter, sidewalks, streetlights, pipe conduit, and concrete lining, granted to Clark County, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

5. Right-of-Way N–60971 for a 16-inch, underground natural gas pipeline and construction staging area, granted to Southwest Gas Corporation, its successors or assigns, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185 sec. 28);

6. Right-of-Way N–74286 for two transformers, and underground electrical lines with related appurtenances, granted to Nevada Power Company, its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

7. Right-of-Way N–88267 for multiple natural gas pipelines with below and above ground appurtenances granted to Southwest Gas Corporation, its successors or assigns, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185 sec. 28);

8. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and/or subsequent conveyance under the R&PP Act, leasing

under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability of the land for a State office building. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision to lease and/or convey under the R&PP Act.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the decision will become effective on March 9, 2012. The lands will not be available for lease and/or subsequent conveyance until after the decision becomes effective.

Authority: 43 CFR 2741.5(h).

Manuela Johnson,

Acting Assistant Field Manager, Las Vegas Field Office.

[FR Doc. 2012–129 Filed 1–6–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069 L1711.0000 AL.0000 025B]

Call for Nominations for the Carrizo Plain National Monument Advisory Council, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is soliciting nominations from the public to fill four positions on the Carrizo Plain National Monument Advisory Committee (MAC). MAC members provide advice and recommendations to the BLM on the management of public lands in the Carrizo Plain National Monument.

ADDRESSES: Nominations should be sent to the Monument Manager, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308.

FOR FURTHER INFORMATION CONTACT: Johna Hurl, Monument Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, (661) 391–6093, *Johna_Hurl@ca.blm.gov* or John Kelley, Carrizo Program Support Technician, at (661) 391–6088, *jtkelley@blm.gov.*

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior (Secretary) to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that conform to the requirements of the Federal Advisory Committee Act (FACA). The rules governing advisory councils are found at 43 CFR subpart 1784. As required by FACA, MAC membership must be balanced and representative of the various interests concerned with the management of the public lands.

The MAC provides representative citizen counsel and advice to the Secretary of the Interior through the BLM with respect to the revision and implementation of the comprehensive plan for the Carrizo Plain National Monument.

The MAC consists of ten members:

(1) A member of, or nominated by, the San Luis Obispo Board of Supervisors;

(2) A member of, or nominated by, the Kern County Board of Supervisors;

(3) A member of, or nominated by, the Carrizo Native American Advisory Council;

(4) A member of, or nominated by, the Central California Resource Advisory Council (RAC);

(5) A member representing individuals or companies authorized to graze livestock within the Monument; and

(6) Five members with recognized backgrounds reflecting:

(i) The purposes for which the Monument was established; and

(ii) The interests of other stakeholders, including the general public, who are affected by or interested in the planning and management of the Monument.

Terms of four present MAC members (two public-at-large, one Kern County Board of Supervisors, one RAC) expired on August 25, 2011. Individuals may nominate themselves or others. Nominees must be residents of the counties or neighboring county in which the MAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical resource. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils. The following must accompany all nominations received in this call for nominations:

- Letters of reference from represented interests or organizations;
- A completed background information nomination form; and
- Any other information that speaks to the nominee's qualifications.

Nominations will be accepted for a 60-day period beginning the date this notice is published.

Timothy Z. Smith,

Field Manager, Bakersfield Field Office.

[FR Doc. 2012–126 Filed 1–6–12; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Preliminary)]

Large Residential Washers From Korea and Mexico; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Mexico of large

residential washers that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Korea. The products subject to the petitions are classifiable in subheading 8450.20.00 of the Harmonized Tariff Schedule of the United States, and imported under statistical reporting number 8450.20.0090. Products subject to these petitions may also be imported under HTS subheadings 8450.11.00, 8450.90.20 or 8450.90.60. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 13, 2012. The Commission's views are due at Commerce within five business days thereafter, or by February 21, 2012.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

DATES: *Effective Date:* December 30, 2011.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez ((202) 205–2136) or Edward Petronzio ((202) 205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on December 30, 2011, by Whirlpool Corporation, Benton Harbor, MI.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 20, 2012, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be filed with the Office of the Secretary (*William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov*) on or before January 18, 2012. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 25, 2012, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain 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 electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on 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 investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: January 3, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–120 Filed 1–6–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–797]

Certain Portable Electronic Devices and Related Software; Determination Not To Review Initial Determination Granting Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 19) granting Complainant's unopposed motion to amend the Complaint and Notice of Investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E

Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 12, 2011, based on a complaint filed by Apple Inc. (''Apple''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain portable electronic devices and related software. 76 FR 50253 (Aug. 12, 2011). The complaint alleged the infringement of claims of U.S. Patent Nos. 7,844,915; 7,469,381; 7,084,859; 7,920,129; and 6,956,564. The complaint named as respondents HTC Corp. of Taoyuan City, Taiwan and its subsidiaries HTC America, Inc. of Bellevue, Washington, and Exedea, Inc. of Houston, Texas. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On October 7, 2011, Apple filed a motion seeking leave to amend the complaint and notice of investigation. In particular, Apple sought to: ''(i) clarify its allegations with respect to asserted U.S. Patent No. 6,956,564 to reflect that it has been reissued subsequent to the institution of this Investigation as U.S. Patent No. RE42,738 E and add two new asserted claims from the reissued patent [claim nos. 4 and 37], (ii) amend the 'Related Litigation' section of the Complaint to reflect inadvertently omitted information, and (iii) identify additional accused products that had not been released at the time the original Complaint was filed [i.e., the HTC Evo 3D, the HTC Evo View 4G, and the HTC Jetstream].'' Order No. 19, at 1 (Dec. 2, 2011).

On December 2, 2011, the ALJ issued an ID granting Apple's unopposed motion to amend the complaint and notice of investigation. Id. at 2–4. No petitions for review of the ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.14 and 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.14, 210.42).

Issued: January 4, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–121 Filed 1–6–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0009]

Agency Information Collection Activities Under Review; Title II of the Americans With Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form

ACTION: 30-Day Notice of Information Collection under review

The Department of Justice, Civil Rights Division, Disability Rights Section, has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 210, pages 67208–67209, on October 31, 2011, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment. Comments are encouraged and will be accepted until February 8, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function 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 collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget (OMB), Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

The information collection is listed below:

(1) *Type of information collection.* Extension of Currently Approved Collection.

(2) *The title of the form/collection.* Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) *The agency form number and applicable component of the Department sponsoring the collection.* No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then makes the appropriate determination regarding the referral of the complaint.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 respondents per year at 0.75 hours per complaint form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 hours annual burden.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Office of the Chief Information Officer, Policy and

Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–92 Filed 1–6–12; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act

Notice is hereby given that on December 21, 2011, a proposed Consent Decree in United States v. Marathon Pipe Line Company, LLC, Civil Action No. 3:11–CV–01123, was lodged with the United States District Court for Southern District of Illinois.

In this action, the United States sought to recover from Marathon natural resource damages under the Oil Pollution Act, 33 U.S.C. 2710, *et seq.,* which arose from an alleged August 2008 discharge, from a subsurface pipeline owned by Marathon, of 5,000 barrels of crude oil into a forested wetland within the watershed of a tributary to the Wabash River and Ohio River. Under the proposed Decree, Marathon will: (1) Pay a total of $90,629 to the United States in reimbursement of the costs incurred in assessing the natural resource damages; (2) restore approximately 7.1 acres of forested wetland; (3) restore an additional 14.2 acres of adjacent agricultural fields and convert the fields into hardwood forest; and (4) install bat houses and wood duck boxes to help mitigate damage to the natural habitats of affected species.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comment relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Marathon Pipe Line Company, LLC,* No. 3:11–CV–01123 (S.D. Ill.), D.J. Ref. No. 90–5–1–1–10296.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Environment and Natural Resources Division, Environmental Enforcement Section, fax no. (202) 514–0097, phone confirmation number (202) 514–1547, email *EESCDCopy.ENRD@usdoj.gov.* In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.50 for a copy of the complete Consent Decree (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–142 Filed 1–6–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on December 5, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between August 2011 and December 2011 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on August 31, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2011 (76 FR 63658).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–118 Filed 1–6–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0047]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine DEA Form 488

ACTION: 30-Day Notice of Information Collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) 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 proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 206, pages 66084–66085, on October 25, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 8, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have 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 John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the eight-digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please

contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, (202) 307–7297, or the DOJ Desk Officer at (202) 395–3897.

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 agency, including whether the information will have practical utility;
- 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;
- 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.

Overview of Information Collection 1117–0047

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA form 488.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 U.S.C. 952 and 21 CFR 1315.34 require that persons who desire to import the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine during the next calendar year shall apply on DEA Form 488 for import quota for such List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 22 persons complete 52 DEA Forms 488 annually for this collection at 1 hour per form, for an annual burden of 52 hours. Respondents complete a separate DEA Form 488 for each List I chemical for which quota is sought.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 52 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–82 Filed 1–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested; E–FOIA

ACTION: 30-day Notice of Information Collection under review.

The Department of Justice, Federal Bureau of Investigation, Records Management Division Record Information Dissemination Section (RIDS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 207, pages, 66325–66326, on October 26, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 8, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Jason Combs, Legal Administrative Specialist, Records Management Division (RMD), Record Information Dissemination Section (RIDS), 170 Marcel Drive, Winchester, Virginia 22602; facsimile (540) 868–4997.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* E–FOIA Submission Form.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Records Management Division/Record Information Dissemination Section, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: FOIA requesters (general public, educational institutions, commercial requesters *etc*).

Abstract: The Record/Information Dissemination Section (RIDS) effectively plans, develops, directs, and manages responses to requests for access to FBI records and information. The requests and disclosure comply with the Freedom of Information and Privacy Acts (Title 5, United States Code, Sections 552 and 552a) and the Freedom of Information Act Executive Order 13392, as well as the Classified National Security Information Executive Order 13526, other Presidential, Attorney General, and FBI policies, procedures, and mandates; judicial decisions; and Congressional directives.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Of the approximately 18,445 government entities that are eligible to submit cases, it is estimated that twenty to thirty percent will actually submit cases to RMD/RIDS. The time burden of the respondents is less than 15 minutes per form.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 1,350 hours, annual burden, associated with this information collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2012–83 Filed 1–6–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0147]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2012–2013 Census of State and Federal Adult Correctional Facilities

ACTION: 30-Day Notice of Information Collection under review.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics 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. The proposed information collected is published to obtain comments from the public and affected agencies. The proposed information collected was previously published in the **Federal Register** Volume 76, Number 210, page 67224–67225, on October 31, 2011, allowing a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 8, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to The Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request 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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the Form/Collection:* 2012–2013 Census of State and Federal Adult Correctional Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–43A Individual Facility List; CJ–43B: Individual Facility Information; and CJ–43 2013 Census of State and Federal Adult Correctional Facilities (under development; this form will be submitted to OMB in a substantive change package in 2012). Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections authorities. Others: Authorities from the Federal Bureau of Prisons and administrators of privately-operated prison facilities. The Census of State and Federal Correctional Facilities obtains information on individual facilities designed to house adults sentenced to confinement by State, Federal, or District of Columbia courts. These facilities include prisons, penitentiaries, and correctional institutions; boot camps; prison farms; reception, diagnostic, and classification centers; road camps; forestry and conservation camps; youthful offender facilities (except in California); vocational training facilities; prison hospitals; drug and alcohol treatment facilities; prerelease centers; halfway houses; and State-operated local detention facilities.

The CJ–43A, Facility Roster: an estimated 71 respondents from state departments of correction, the Federal Bureau of Prisons, and corporations operating private prisons will be provided with a list of facilities in their jurisdictions (CJ–43A). Respondents will be asked to provide the information requested in the CJ–43B (see below) for each individual facility in their jurisdiction. Respondents can opt to use this listing to aid them in identifying individual facilities in operation on March 31, 2012, the anticipated survey reference date, or they can opt to provide the information based on a list of facilities generated through their own data systems. The CJ–43A is intended to be used as an aid and is not intended as an instrument to be filled out, so there is no burden associated with this instrument.

The CJ–43B collection instrument: an estimated 71 respondents from state departments of correction, the Federal Bureau of Prisons, and corporations operating private prisons will be asked to provide basic facility information for an estimated 2,200 adult correctional facilities. The CJ–43B identifies the elements to be collected for each facility. These items include name and location of the facility, sex of inmates housed, physical security of the facility, percentage of inmates regularly permitted to leave the facility unaccompanied, a one-day count of inmates by sex, and future plans to modify or close the facility. Based on the preference of the respondent, these data can be submitted via an electronic datafile generated from the respondent's information management system or via individual forms for each facility. The Bureau of Justice Statistics will use information obtained from the CJ–43B to develop a sampling frame for future inmate surveys as well as to respond to

queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others seeking facility-level statistics.

The CJ–43: Respondents from state departments of correction, the Federal Bureau of Prisons, and corporations operating private prisons will be asked to provide detailed facility information for an estimated 2,200 facilities in operation. This collection instrument is under development, but is expected to include items regarding facility characteristics, such as facility functions, capacity, and court orders or consent decrees under which facilities are operating; population characteristics, including special populations housed; staff characteristics; measures of facility security; and facility programs. BJS expects to consult with corrections experts and professionals to determine other topical items to be included in this collection. These statistics will provide a snapshot of adult correctional institutions in the United States and will be used to respond to queries from administrators, legislators, researchers, and planners to track changes in the numbers and types of facilities in operation, changes in staffing, security issues, and programs/services available to inmates in the state and federal correctional systems. A supplemental approval will be submitted to OMB when the materials are ready for review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,200 responses at 15 minutes each for the CJ–43B. The estimated time is based on feedback from state and federal corrections department staff. The total burden estimate is based on the conservative assumption that all respondents would submit separate forms for each facility; however, it is expected that the majority of respondents will choose to submit a single electronic file generated from their information management systems. The CJ–43 is still in the planning stages. A supplemental approval and burden adjustment will be sought through OMB when the materials are ready for review.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 550 annual total burden hours associated with the collection.

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., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–91 Filed 1–6–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 1–2011; Delegation of Authority and Assignment of Responsibilities to the Employee Benefits Security Administration

1. *Purpose.* To delegate authority and assign responsibilities for the administration of the Department of Labor's responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA), Federal Employees' Retirement System Act of 1986 (FERSA), and certain other statutes.

2. *Authority and Directives Affected.* This Order supersedes Secretary's Order 3–2010 (September 2, 2010).

3. *Background.* ERISA places responsibility in the Department of Labor for the administration of a comprehensive program to protect the interests of participants and beneficiaries of private sector employee benefit plans. This Order delegates the Secretary of Labor's authority and assigns responsibility for ERISA and for specified other laws to the Assistant Secretary for Employee Benefits Security.

In particular, this Order delegates the Secretary's authority and assigns responsibility under sections 45R and 4980H of the Internal Revenue Code, as added by sections 1421 and 1513, respectively, of Public Law 111–148, the Patient Protection and Affordable Care Act, 124 Stat. 119 (2010). The duties delegated to the Assistant Secretary include authority and responsibility to define the term ''seasonal worker'' under 26 U.S.C. 45R(d)(5)(B) and 4980H(c)(2)(B)(ii).

All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for EBSA in Secretary's Order 3–2010, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

4. *Delegation of Authority and Assignment of Responsibilities.*

A. Except as hereinafter provided, the Assistant Secretary for Employee Benefits Security is delegated the authority and assigned the responsibilities of the Secretary of Labor—

(1) Under the following statutes, including any amendments:

(a) The Employee Retirement Income Security Act of 1974, as amended, except for subtitle C of Title III and Title IV (29 U.S.C. 1001–1232);

(b) The Welfare and Pension Plans Disclosure Act of 1958, as amended Public Law 85–836, 72 Stat. 997; Public Law 86–624, 74 Stat. 417; Public Law 87–420, 76 Stat. 35;

(c) The Federal Employees' Retirement System Act of 1986 (5 U.S.C. 8401–8479);

(d) The Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, 110 Stat. 1936;

(e) Section 311(b) the Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, 123 Stat. 65;

(f) Section 3001 of the American Recovery and Reinvestment Act of 2009 Public Law 111–5;

(g) Sections 18A and 18B of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. sections 218A and 218B, and the associated FLSA authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations under sections 18A and 18B, and any other authority and responsibilities granted the Secretary to enforce sections 18A and 18B of the FLSA;

(h) Sections 45R and 4980H of the Internal Revenue Code, 26 U.S.C. 45R and 4980H; and

(i) As directed by the Secretary, such additional Federal acts similar to or related to those listed in paragraphs (a) through (h), above, that from time to time may assign additional authority or responsibilities to the Department or the Secretary.

(2) To request information the Internal Revenue Service (IRS) possesses for use in connection with the administration of Title I of ERISA of 1974.

B. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all officials of the Department relating to the administration of the statutes listed in paragraph 4.A.(1) of this Order, for bringing appropriate legal actions on behalf of the Secretary, and representing the Secretary in all civil proceedings. The Solicitor of Labor is also authorized to request information the IRS possesses for use in connection with the administration of Title I of ERISA.

C. *The Inspector General* is authorized to request information the IRS possesses for use in connection with the administration of Title I of ERISA.

5. *Reservation of Authority.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in paragraph 4.A.(1) of this Order and responsibilities under Subtitle C of Title III of ERISA are reserved to the Secretary.

B. The Pension Benefit Guaranty Corporation carries out responsibilities under Title IV of ERISA.

C. Except as expressly provided, nothing in this Order limits or modifies the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

6. *Effective Date.* This Order is effective immediately.

Dated: December 21, 2011.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012–113 Filed 1–6–12; 8:45 am]

BILLING CODE 4510–23–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meetings

AGENCY: *Agency Holding the Meetings:* Nuclear Regulatory Commission

DATES: Week of January 9, 2012.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of January 9, 2012

Wednesday, January 11, 2012

10 a.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969, or send an email to *darlene.wright@nrc.gov.*

Dated: January 4, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–201 Filed 1–5–12; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–9; Order No. 1096]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Direct Contracts 1 contract to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: *Comments are due:* January 10, 2012.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Notice of Filing
III. Ordering Paragraphs

I. Background

On December 29, 2011, the Postal Service filed a notice announcing its intent to enter into an additional Global Direct Contracts 1 agreement (Agreement).[1] Global Direct Contracts provide a rate for mail acceptance within the United States, transportation to a receiving country of mail that bears the destination country's indicia, and payment by the Postal Service of the appropriate settlement charges to the receiving country.[2] The Postal Service believes that the instant Agreement should be included within the Global Direct Contracts 1 product because it is functionally equivalent to the Global Direct Contracts 1 agreement in Docket Nos. MC2010–17 and CP2010–18. Notice at 2.

The instant Agreement. The Postal Service filed the instant Agreement under 39 CFR 3015.5. *Id.* In addition, the Postal Service contends that the Agreement is consistent with Order No. 386.[3] The Postal Service states that the instant Agreement succeeds the Global Direct Contract in Docket No. CP2011–52, which is scheduled to expire January 15, 2012. *Id.* at 2–3. The term of the instant Agreement begins on January 16, 2011 and ends in January 2013 on the day before Canada Post Corporation implements price changes for its domestic Admail. *Id.* at 3, Attachment 1 at 7. If prices for Admail do not change during January 2013, then the instant Agreement is scheduled to expire January 31, 2013. *Id.*

To support its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—a redacted copy of the contract;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–10, which establishes prices and classifications for

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, December 29, 2011 (Notice).

[2] Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, Docket Nos. MC2008–7, CP2008–16 and CP2008–17, issued July 16, 2008 (Governors' Decision No. 08–10). The Commission revised the Mail Classification Schedule language proposed in Governors' Decision No. 08–10 to reflect the actual payment practice under typical Global Direct Contracts. *See* Docket Nos. MC2009–9, CP2009–10 and CP2009–11, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008, at 9 (Order No. 153).

[3] *See* Docket Nos. MC2010–17 and CP2010–18, Order Concerning Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, January 11, 2010 (Order No. 386).

Global Direct, Global Bulk Economy, and Global Plus Contracts; and

• Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

The Postal Service states that the instant Agreement fits within the Mail Classification Schedule language for Global Direct Contracts included in Governors' Decision No. 08–10, with the modification proposed by the Commission to reflect the actual payment practice under these types of agreements. *Id.* at 2 (*citing* Order No. 153 at 9).

The Notice advances reasons why the instant Agreement is functionally equivalent to the previous Global Direct Contracts 1 agreement in Docket Nos. MC2010–17 and CP2010–18. *Id.* at 3. Aside from cosmetic or customer-specific updates, the Postal Service contends that the only differences are that the instant Agreement (1) concerns Global Direct service used with Admail to Canada; (2) contains more detailed procedures relating to penalties for mail that does not comply with applicable regulations; (3) addresses actual and potential changes in pricing; and (4) revises minimum commitments and annexes. *Id.* at 3–4. Despite these differences, the Postal Service contends that the instant contract is functionally equivalent to the Global Direct Contracts 1 agreement filed previously because the core terms and conditions remain the same. *Id.* at 4.

The Postal Service asserts that ''the cost and market characteristics of this agreement are substantially similar to those of prior Global Direct contracts'' and that the Agreement complies with the requirements of 39 U.S.C. 3633. *Id.* It requests that the Commission include this Agreement within the Global Direct Contracts 1 product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2012–9 to consider matters related to the contract identified in the Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632 or 3633 and 39 CFR part 3015. Comments are due no later than January 10, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is Ordered

1. The Commission establishes Docket No. CP2012–9 to consider matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than January 10, 2012.

3. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–145 Filed 1–6–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–93; Order No. 1081]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Odin, Minnesota post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: January 24, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received two petitions for review of the Postal Service's determination to close the Odin post office in Odin, Minnesota. The first petition for review received November 30, 2011, was filed by Paul S. Berg. The second petition for review received November 30, 2011, was filed by Robert D. Harder. The earliest postmark date is November 19, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–93 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 5, 2012.

Notwithstanding the Postal Service's determination to close this post office, on December 15, 2011, the Postal Service advised the Commission that it ''will delay the closing or consolidation of any Post Office until May 15, 2012''.[1] The Postal Service further indicated that it ''will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.'' *Id.* It stated that the only ''Post Offices'' subject to closing prior to May 16, 2012, are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. It affirmed that it ''will not close or consolidate any other Post Office prior to May 16, 2012.'' *Id.* Lastly, the Postal Service requested the Commission ''to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.'' *Id.*

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. 404(d)(5).

Categories of issues apparently raised. Petitioners contend that (1) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (2) the Postal Service failed to provide substantial evidence in support of the determination (*see* 39 U.S.C. 404(d)(5)(c)).

[1] United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, (Notice).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date on which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date on which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 23, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 30, 2011	Filing of Appeal.
December 15, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 15, 2011	Deadline for the Postal Service to file any responsive pleading.
January 23, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 4, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 24, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 8, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 15, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 16, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–77 Filed 1–6–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–94; Order No. 1082]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Alvord, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: January 25, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received five petitions for review of the Postal Service's determination to close the Alvord post office in Alvord, Iowa. The first petition for review received

December 1, 2011, was filed by Dr. and Mrs. Robert Hodgson. The second petition for review received December 6, 2011, was filed by Jackie Knobloch. The third petition for review received December 6, 2011, was filed by Janet Newborg. The fourth petition for review received December 7, 2011, was filed by Joanne C. Smith. The fifth petition for review received December 9, 2011, was filed by Elaine Childress. The earliest postmark date is November 25, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–94 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 5, 2012.

Notwithstanding the Postal Service's determination to close this post office, on December 15, 2011, the Postal Service advised the Commission that it ''will delay the closing or consolidation of any Post Office until May 15, 2012''.[1] The Postal Service further indicated that it ''will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.'' *Id.* It stated that the only ''Post Offices'' subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. It affirmed that it ''will not close or consolidate any other Post Office prior to May 16, 2012.'' *Id.* Lastly, the Postal Service requested the Commission ''to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.'' *Id.*

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. 404(d)(5).

Categories of issues apparently raised. Petitioners contend that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date on which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date on which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 23, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Laura R. Schwartz is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

December 1, 2011	Filing of Appeal.
December 16, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 16, 2011	Deadline for the Postal Service to file any responsive pleading.
January 23, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).

[1] United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, (Notice).

PROCEDURAL SCHEDULE—Continued

January 5, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 25, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 9, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 16, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 23, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–90 Filed 1–6–12; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Application for Employee Annuity Under the Railroad Retirement Act; OMB 3220–0002.

Section 2a of the Railroad Retirement Act (RRA) provides for payments of age and service, disability, and supplemental annuities to qualified employees. An annuity cannot be paid until the employee stops working for a railroad employer. In addition, the age and service employee must relinquish any rights held to such jobs. A disabled employee does not need to relinquish employee rights until attaining Full Retirement Age, or if earlier, when their spouse files for a spouse annuity. Benefits become payable after the employee meets certain other requirements, which depend on the type of annuity payable. The requirements for obtaining the annuities are prescribed in 20 CFR parts 216 and 220.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, an employee retirement annuity the RRB uses Forms AA–1, *Application for Employee Annuity;* AA–1d, *Application for Determination of Employee Disability; G–204, Verification of Workers Compensation/Public Disability Benefit Information* and electronic Form AA–1cert, *Application Summary and Certification.*

The AA–1 application process obtains information from an applicant about their marital history, work history, military service, benefits from other governmental agencies, railroad pensions and Medicare entitlement for either an age and service or disability annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the on-line information system generates, for the applicant's review and traditional pen and ink ''wet'' signature, Form AA–1cert, *Application Summary and Certification,* which summarizes the information that was provided or verified by the applicant. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of Form AA–1 is used.

Form AA–1d, *Application for Determination of Employee's Disability,* is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act, for early Medicare based on a disability. Form G–204, *Verification of Worker's Compensation/Public Disability Benefit Information,* is used to obtain and verify information concerning a worker's compensation or a public disability benefit that is or will be paid by a public agency to a disabled railroad employee. The RRB proposes no changes to Forms AA–1d or G–204.

Consistent with 20 CFR 217.17, upon completion of the AA–1 interview process, the RRB proposes to provide, in addition to the current Form AA–1cert pen and ink ''wet'' signature, an alternate signing method called ''Attestation,'' which will be documented by new form AA–1sum. Attestation refers to an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. The information collected as part of the AA–1 interview process will be the same irrespective of whether the application is signed by a pen and ink ''wet'' signature or by attestation. The only difference will be the method of signature.

In addition, consistent with Department of Treasury guidelines, the RRB proposes revisions to Forms AA–1 and AA–1cert to provide claimants a Direct Express® Master Card® Debit Card payment option. Other non-burden-impacting editorial and formatting changes are proposed. One response is requested of each respondent. Completion of the forms is required to obtain a benefit.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–1 (without assistance)	100	62	103
AA–1cert (with assistance)	4,900	30	2,450
AA–1sum (with assistance)	9,100	29	4,398
AA–1d (with assistance)	3,700	35	2,158

ESTIMATE OF ANNUAL RESPONDENT BURDEN—Continued

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–1d (without assistance)	5	60	5
G–204	20	15	5
Total	17,825		9,119

2. *Title and purpose of information collection:* Application for Survivor Insurance Annuities; OMB 3220–0030.

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced spouses, mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees if there are no qualified survivors of the employee immediately eligible for an annuity. The requirements relating to the annuities are prescribed in 20 CFR 216, 217, 218, and 219.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, a survivor annuity the RRB uses Forms AA–17, *Application for Widow(er)'s Annuity;* AA–17b, *Applications for Determination of Widow(er)'s Disability;* AA–18, *Application for Mother's/Father's and Child's Annuity;* AA–19, *Application for Child's Annuity;* AA–19a, *Application for Determination of Child's Disability;* AA–20, *Application for Parent's Annuity,* and electronic Form AA–17cert, *Application Summary and Certification.*

The AA–17 application process obtains information from an applicant about their marital history, work history, benefits from other government agencies, and Medicare entitlement for a survivor annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the system generates, for the applicant's review and traditional pen and ink ''wet'' signature, Form AA–17cert, *Application Summary and Certification,* which is a summary of the information that the applicant provided or verified. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of Form AA–17 is used.

Consistent with 20 CFR 217.17, upon completion of the AA–17 interview process, the RRB proposes to provide, in addition to the current Form AA–17cert pen and ink ''wet'' signature, an alternate signing method called ''Attestation,'' which will be documented by new form AA–17sum. Attestation refers to an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. The information collected as part of the AA–17 interview process will be the same irrespective of whether the application is signed by a pen and ink ''wet'' signature or by attestation. The only difference will be the method of signature.

In addition, consistent with Department of Treasury guidelines, the RRB proposes revisions to Forms AA–17, AA–17cert, AA–18, AA–19, and AA–20 cert to provide claimants a Direct Express® Master Card® Debit Card payment option. Other non-burden-impacting editorial and formatting changes are proposed. No changes are proposed to Forms AA–17b and AA–19a. One response is requested of each respondent. Completion of the forms is required to obtain a benefit.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–17 (without assistance)	100	47	78
AA–17b (with assistance)	280	40	187
AA–17b (without assistance)	20	50	17
AA–17cert (with assistance)	900	20	300
AA–17sum (with assistance)	2,100	19	665
AA–18 (without assistance)	12	47	9
AA–19 (without assistance)	9	47	7
AA–19a (with assistance)	285	45	214
AA–19a (without assistance)	15	65	16
AA–20 (without assistance)	1	47	1
Total	3,722		1,494

3. *Title and purpose of information collection:* Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042.

Section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age, date of retirement, and years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR parts 216, 218, 219, 232, 234, and 295.

To collect the information needed to help determine an applicant's entitlement to, and the amount of, a

spouse annuity the RRB uses Form AA–3, *Application for Spouse/Divorced Spouse Annuity,* and electronic Form AA–3cert, *Application Summary and Certification.*

The AA–3 application process gathers information from an applicant about their marital history, work history, benefits from other government agencies, railroad pensions and Medicare entitlement for a spouse annuity. An RRB representative interviews the applicant either at a field office (preferred), an itinerant point, or by telephone. During the interview, the RRB representative enters the information obtained into an on-line information system. Upon completion of the interview, the system generates, for the applicant's review and traditional pen and ink ''wet'' signature, Form AA–3cert, *Application Summary and Certification,* which is a summary of the information that the applicant provided or verified. When the RRB representative is unable to contact the applicant in person or by telephone, for example, the applicant lives in another country, a manual version of Form AA–3 is used.

Consistent with 20 CFR 217.17, upon completion of the AA–3 interview process, the RRB proposes to provide, in addition to the current Form AA–3cert pen and ink ''wet'' signature, an alternate signing method called ''Attestation,'' which will be documented by new Form AA–3sum. Attestation refers to an action taken by the RRB representative to confirm and annotate in the RRB records (1) the applicant's intent to file an application; (2) the applicant's affirmation under penalty of perjury that the information provided is correct; and (3) the applicant's agreement to sign the application by proxy. The information collected as part of the AA–3 interview process will be the same irrespective of whether the application is signed by a pen and ink ''wet'' signature or by attestation. The only difference will be the method of signature.

In addition, consistent with Department of Treasury guidelines, the RRB proposes revisions to Forms AA–3 and AA–3cert, to provide claimants a Direct Express® Master Card® Debit Card payment option. Other non-burden-impacting editorial and formatting changes are proposed. One response is requested of each respondent. Completion of the forms is required to obtain a benefit.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–3 (without assistance)	250	58	242
AA–3cert (with assistance)	3,700	30	1,850
AA–3sum (with assistance)	7,100	29	3,432
Total	11,050	.....	5,524

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Patricia.Henaghan@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2012–190 Filed 1–6–12; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, January 11, 2012 at 10 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to approve the 2012 budget of the Public Company Accounting Oversight Board and will consider the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

Commissioner Paredes, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 5, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–282 Filed 1–5–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66087; File No. SR–Phlx–2011–182]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the PHLX Market Exhaust Functionality

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1082, Firm Quotations, by modifying Exchange Rule 1082(a)(ii)(B)(4), Market Exhaust, to reflect the Exchange's discontinuation of the Market Exhaust functionality (hereinafter, ''Market Exhaust''), a feature of the Exchange's PHLX XL® automated options trading system.[3]

The Exchange also proposes to amend Exchange Rule 1080 by deleting a reference to ''Market Exhaust'' from Rule 1080(c).

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reflect in the Exchange rules the discontinuation of the PHLX XL Market Exhaust functionality.

In June, 2009, the Exchange added several significant enhancements to its automated options trading platform (now known as PHLX XL), and adopted rules to reflect those enhancements.[4] As part of the system enhancements, the Exchange proposed, among other things, Market Exhaust, which is defined below. Several elements of Market Exhaust have been part of a pilot (the ''pilot'') which was originally scheduled to expire November 30, 2009, and later extended through September 30, 2010.[5] The Exchange subsequently modified the pilot to address the manner in which the PHLX XL system disseminates quotes during and after the Market Exhaust process.[6] That modification was implemented on a pilot basis, scheduled to expire November 30, 2010,[7] and the pilot was then extended through March 31, 2011.[8] The pilot was then extended through July 31, 2011,[9] November 30, 2011,[10] and its current expiration date of February 29, 2012.[11]

Market Exhaust Functionality

The PHLX XL system initiates Market Exhaust when there are no PHLX XL participant quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received.[12] The PHLX XL system initiates a ''Market Exhaust Auction'' for the initiating order, and then goes through a series of steps depending on the market conditions present for the affected series, including a broadcast to PHLX XL participants, execution of all or part of the initiating order, routing the initiating order (or remaining contracts following execution) to better priced away markets, and a ''Provisional Auction,'' after which any unexecuted contracts from the initiating order will be subject to, and not executable outside of, an Auction Quote Range (''AQR''). During the Provisional Auction, any unexecuted contracts from the initiating order are displayed in the Exchange quote for the remaining size for a brief period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted, unless the member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order.

Discontinuation of Market Exhaust

The Exchange proposes to discontinue the application of Market Exhaust on PHLX XL. The Exchange has determined that Market Exhaust has only affected a small number of orders, given the specific set of circumstances that must occur in order for Market Exhaust to be initiated. Market Exhaust, which was originally intended to protect against erroneous executions when there are no participant quotes on the Exchange, may actually result in a customer missing the opportunity to access liquidity present on the order book and/or on other exchanges while their order is involved in the Market Exhaust process. Once Market Exhaust is discontinued on the Exchange, orders received when there are no PHLX XL participant quotations in the Exchange's disseminated market for the affected series will be handled in accordance with existing Exchange rules regarding electronic order entry, execution, routing, trade reporting, and firm quotations.[13]

The Exchange proposes to amend Rule 1082(a)(ii)(B)(4) by adopting Rule 1082(a)(ii)(B)(4)(a), which would state that, if there are no offers both on the Exchange and on away markets in the affected series, market orders to buy in the affected series will be cancelled immediately, and an electronic report of such cancellation will be transmitted to the sender. The Exchange would cancel such a market order because in this rare circumstance there would be no disseminated market on the Exchange and no disseminated market on any away market against which such market order could be routed and executed, and there would be no price at which the Exchange could place such a market order on the Exchange's limit order book.

Upon the discontinuation of Market Exhaust, orders that would have been handled under Market Exhaust will be handled according to Exchange rules that address specific market conditions. Proposed Rule 1082(a)(ii)(B)(4)(b) would address the PHLX XL system's functionality in the circumstance where there are no offers on the Exchange and there are offers on away markets in the affected series. In such a circumstance,

[3] This proposal refers to ''PHLX XL'' as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from ''Phlx XL II'' to ''PHLX XL'' for branding purposes.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] *See* Securities Exchange Act Release No. 60951 (November 6, 2009), 74 FR 59275 (November 17, 2009) (SR–Phlx–2009–95).

[6] *See* Securities Exchange Act Release No. 63024 (September 30, 2010), 75 FR 61799 (October 6, 2010) (SR–Phlx–2010–134).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 63350 (November 19, 2010), 75 FR 73150 (November 29, 2010) (SR–Phlx–2010–156).

[9] *See* Securities Exchange Act Release No. 64056 (March 8, 2011), 76 FR 13678 (March 14, 2011) (SR–Phlx–2011–29).

[10] *See* Securities Exchange Act Release No. 64833 (July 7, 2011), 76 FR 41317 (July 13, 2011) (SR–Phlx–2011–95).

[11] *See* Securities Exchange Act Release No. 65670 (November 2, 2011), 76 FR 69308 (November 8, 2011) (SR–Phlx–2011–144).

[12] *See* Exchange Rule 1082(a)(ii)(B)(4).

[13] *See, e.g.,* Exchange Rules 1014, 1051, 1080, and 1082.

market orders to buy will be handled pursuant to Exchange Rule 1080(m).[14]

Proposed Rule 1082(a)(ii)(B)(4)(c) would address the PHLX XL system's functionality in the circumstance where there are no bids or a zero priced bid on the Exchange and there are no bids on away markets in the affected series. In such a circumstance, the Exchange will disseminate a bid price of zero, and market orders to sell will be handled pursuant to Exchange Rule 1080(i).[15]

Proposed Rule 1082(a)(ii)(B)(4)(d) would address the PHLX XL system's functionality in the circumstance where there are no bids or a zero priced bid on the Exchange and there are bids on away markets in the affected series. In such a circumstance, market orders to sell will be handled pursuant to Exchange Rule 1080(m).

The Exchange believes that the proposed rule change benefits customers and the marketplace as a whole by simplifying the order handling process and enabling customers to immediately access posted liquidity on the Exchange and away markets even when there may not be PHLX participant quotes present.[16]

The Exchange also proposes to amend Exchange Rule 1080 by deleting a reference to ''Market Exhaust'' from Rule 1080(c).

The Exchange will complete the discontinuation of the Market Exhaust functionality on or before January 31, 2012.[17]

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(5) of the Act [19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes that the proposed discontinuation of Market Exhaust protects investors and the public interest by ensuring that customers have the opportunity to access liquidity present on the order book and/or on other exchanges quickly, instead of foregoing such opportunity while their order is involved in the Market Exhaust process. In the rare set of circumstances that give rise to Market Exhaust, investors should continue to receive quality executions on PHLX and at away markets (following routing if appropriate).

Moreover, the proposed discontinuation of Market Exhaust removes impediments and perfects the mechanism of a free and open market and a national market system by expediting the PHLX execution, routing and trade reporting process, all to the benefit of the markets as a whole.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) [21] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–182 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–182. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

[14] Rule 1080(m), Order Routing, describes the PHLX XL functionality by which eligible orders are routed to away markets for possible execution.

[15] Rule 1080(i) states that the system will convert market orders to sell a particular option series to limit orders to sell with a limit price of the minimum trading increment applicable to such series that are received when: (A) For options listed only on the Exchange: (1) The Exchange's disseminated bid price in such option series is zero; and (2) the Exchange's disseminated quotation in the series has a bid/ask differential less than or equal to $0.25; or (B) For options that are listed on multiple exchanges: (1) The disseminated NBBO includes a bid price of zero in the series; and (2) the Exchange's disseminated quotation in the series has a bid/ask differential less than or equal to $0.25. Such orders will be automatically placed on the limit order book in price-time priority.

[16] Additionally, the Exchange notes that the deletion of the rules concerning Market Exhaust effects consistency between the rules and the PHLX XL functionality in compliance with the Act.

[17] The Exchange will issue a circular to membership describing the discontinuation of Market Exhaust prior to the effectiveness of such discontinuation.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–182, and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–101 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66075; File No. SR–C2–2011–042]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to the Exchange's Automated Improvement Mechanisms

December 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 2011, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend C2 Rules 6.51, *Automated Improvement Mechanism.* The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/RuleFilings.aspx*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend C2 Rule 6.51 to eliminate the requirement that there be at least three market-makers quoting in the relevant series in order for an Auction to commence.

This proposed rule change is based on the current rules of the Boston Options Exchange Group, LLC (''BOX'')[5] and the International Securities Exchange, LLC (''ISE'')[6] relating to the Price Improvement Period (''PIP'') and Price Improvement Mechanism (''PIM''), respectively, which are automated price improvement mechanisms similar to AIM.[7]

AIM allows a TPH to submit an Agency Order along with a contra-side second order (a principal order or a solicited order for the same size as the Agency Order) into an Auction where other participants could compete with the Initiating TPH's second order to execute against the Agency Order, which guarantees that the Agency Order will receive an execution. Once an Auction commences, the Initiating TPH cannot cancel it.[8]

C2 Rule 6.51(a)(4) currently requires that there be at least three market-makers quoting in the relevant series for an Auction to commence. The Exchange is proposing to eliminate this requirement. The Exchange does not believe that customer orders should be denied the benefits of AIM simply because there may be less than three market-makers quoting in a relevant options class at a specific point in time. Any concern regarding an Auction starting with a lower number of market-makers quoting in a relevant series is offset by the broad participation and competition that would be present once an Auction commenced.

In support of this proposal, the Exchange notes that both PIP[9] and PIM[10] permit auctions to commence without the condition that there be a minimum number of market-makers quoting in the particular series. Further, like PIP and PIM, responding to C2 AIM auctions is open to all permit holders. The Exchange believes that AIM, and in turn the customers that benefit from AIM, would be disadvantaged if the three market-maker requirement remained as a condition to start an Auction because this requirement potentially reduces the number of Auctions and, as a result, opportunities for price improvement. Because BOX and ISE are currently able to offer their customers price improvement without a minimum quoter requirement in PIP and PIM, respectively, the Exchange believes it is important for competitive purposes that it be able to offer the same opportunities for price improvement on C2 through AIM.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'')[11] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and

[5] *See* BOX Rules Chapter V, Section 18.

[6] *See* ISE Rule 723.

[7] AIM, PIP and PIM have certain characteristics in common with each other. All three mechanisms (a) Provide for the opportunity for customer price improvement, (b) have certain periods where the initial orders are exposed for potential price improvement, (c) have certain guidelines regarding the types of orders that may be eligible for price improvement, and (d) have certain defined rules related to the allocation of trades within price improvement auctions, although there are differences in the way orders are allocated.

[8] *See* C2 Rule 6.51(b)(1)(A).

[9] *See supra* note 5; *see also* Securities Exchange Act Release No. 34–58999 (November 21, 2008), 73 FR 72536 (November 28, 2008) (SR–BSE–2008–54) (order approving proposed rule change to eliminate requirement that there be at least three market-makers quoting in the relevant series for an auction to commence).

[10] *See supra* note 6; *see also* Securities Exchange Act Release No. 34–58710 (October 1, 2008), 73 FR 59008 (October 8, 2008) (SR–ISE–2008–63) (order approving proposed rule change to eliminate requirement that there be at least three market-makers quoting in the relevant series for an auction to commence).

[11] 15 U.S.C. 78s(b)(1).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change is a reasonable modification designed to provide additional flexibility for TPHs to obtain executions on behalf of their customers while continuing to provide meaningful, competitive Auctions. The Exchange also believes that that proposed rule change will ultimately enhance competition in the AIM Auctions and provide customers with additional opportunities for price improvement. The rule change is consistent with changes made by other exchanges and it serves to remove impediments to and to perfect the mechanism for a free and open market and a national market system by allowing more price improvement auctions to occur on C2.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–042. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–C2–2011–042, and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–93 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66079; File No. SR–Phlx–2011–178]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Stock Execution Clerks

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on December 20, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to eliminate the stock execution clerk category from its Rules.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the category of stock execution clerk from the Exchange's Rules. This registration capacity is outdated and no longer necessary.

A stock execution clerk is currently defined in Exchange Rule 1090 as any clerk other than a specialist clerk on the Exchange trading floor who functions as an intermediary in a transaction (i) Consummated on the Exchange; (ii) entered verbally for execution other than on the Exchange; or (iii) entered into a third party system designed to execute transactions other than on the Exchange.[5] A stock execution clerk is intended to provide a service to Exchange members on the Options Floor by accepting orders for the purchase and sale of securities underlying options transactions. Once such orders are accepted, the stock execution clerk forwards such orders to the appropriate marketplace for execution. The transactions executed are typically hedging transactions in underlying stocks for Exchange specialists and Registered Options Traders.[6] Any member or member organization engaged as a stock execution clerk is required to register that person as such with the Exchange's Membership Department. A stock execution clerk that performs any function other than a solely clerical or ministerial function shall, prior to performing any function as a stock execution clerk, (i) Comply with the registration requirement(s) set forth in Exchange Rule 604, where applicable; (ii) disclose in detail to the Exchange, on an annual basis, the specific nature of such additional function(s); and (iii) in accordance with Exchange Rule 748, submit to the Exchange written supervisory procedures relating to such member or member organization's activities as a stock execution clerk.[7]

In 1999, the Exchange adopted Exchange Rule 620 entitled ''Trading Floor Registration'' and required all trading floor personnel, including clerks, interns, stock execution clerks and other associated persons of a member to register with the Exchange in order to more efficiently monitor individuals on the Exchange's trading floor and their current status.[8] In 2001, the Exchange adopted Rule 1090 entitled ''Clerk'' to specifically define a clerk as any registered on-floor person employed by or associated with a member or member organization who is not a member and is not eligible to effect transactions on the Options Floor as a Specialist, Registered Options Trader, or Floor Broker in order to identify a category of all persons that are not members of the Exchange and who are not eligible to effect transactions, but are located on the Exchange's Options Floor.[9] Further, the Exchange specifically identified two types of clerks, a stock execution clerk and a specialist clerk.[10] In that rule change, the Exchange noted that stock execution clerks must clear transactions through a NASD (now the Financial Industry Regulatory Authority or ''FINRA'') member firm, and determine whether their activities as stock execution clerks require them to be registered as NASD (now FINRA) members.[11] The Exchange intended that the activities of stock execution clerks should be conducted consistently with the Act and the rules and regulations thereunder.

The Exchange is proposing to eliminate this registration category because there are no clerks registered as a stock execution clerks today on the trading floor. There are still persons registered as clerks and specialist clerks pursuant to Rule 1090, but there are not individuals performing the duties of a stock execution clerk at the Exchange, nor has there been for some time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by eliminating a registration category that is no longer necessary. Today, the function of a stock execution clerk has become largely automated. The transactions that were handled by stock execution clerks take place off-floor today and mostly occur electronically. This type of business is not conducted on the Exchange's trading floor today. For these reasons and in the interest of maintaining current and updated Rules, the Exchange believes that eliminating the stock execution clerk category provides greater clarity to members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[5] *See* Exchange Rule 1090, Commentary .01(a). Further, no stock execution clerk shall: (i) Act as an intermediary in any transaction other than under the direct supervision of a member; (ii) enter into any clearing transaction or participate in any clearing process; (iii) have discretion or independent authority over any account or transaction. *See* Exchange Rule 1090, Commentary .01(d).

[6] A Registered Options Trader (''ROT'') includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014(b)(i) and (ii).

[7] *See* Exchange Rule 1090, Commentary .01(b).

[8] *See* Securities Exchange Act Release No. 42365 (January 28, 2000), 65 FR 5922 (February 7, 2000) (SR–Phlx–99–46).

[9] *See* Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273 (September 25, 2002) (SR–Phlx–2001–104). The Exchange notes that only Exchange members may bid for and offer securities in the open market on the Exchange Floor. *See* Exchange Rule 104.

[10] *See* Rule 1090 at Commentary .01 and 02.

[11] *See* Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273 (September 25, 2002) (SR–Phlx–2001–104). *See also* Section 15(b)(8) of the Act.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–178 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–178. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–178 and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–95 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66082; File No. SR–C2–2011–041]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule With Respect to Public Customer Maker/Taker Fee (Rebate) and Connectivity Charges

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2011, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

C2 proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, the Exchange proposes to amend its Maker and Taker fees and rebates with regards to Public Customer complex orders. Currently, the Exchange provides a Maker rebate of $0.25 per contract for such orders, and assesses no Taker fee. However, for competitive reasons, the Exchange desires to offer improved pricing for Public Customer complex orders. The International Securities Exchange, LLC (''ISE'') provides rebates of $0.30 per contract for both Makers and Takers for complex orders that trade with non-customer orders in select high-volume, competitive classes.[3] The Exchange hereby proposes to provide a rebate of $0.35 per contract for both Makers and Takers for complex orders, regardless of with whom such orders trade. By providing a higher rebate, and not limiting with whom such orders can trade nor in which classes the new rebates apply, the Exchange intends to attract a higher volume of customer trades and thereby provide other market participants with higher liquidity and greater trading opportunities.

The Exchange also proposes to increase the fees charged for access to a Network Access Port (1 Gigabyte) to $500 per month for regular access and $1000 per month for Sponsored User access. The Exchange recently made a sizable investment to upgrade the equipment involved in the Network Access Port, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. The Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion. Moreover, this change in Network Access Port fees is in line with the amounts assessed for similar access at other exchanges. ISE assesses a fee of $500 for network access up to and including 1 gigabyte.[4] Chicago Board Options Exchange, Incorporated (''CBOE'') also recently submitted a proposed rule change to increase the fees charged for access to a Network Access Port (1 Gigabyte) to $500 per

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* ISE Fee Schedule, page 18 (footnote 3).

[4] *See* ISE Schedule of Fees, page 9.

month for regular access and $1000 per month for Sponsored User access.[5]

The Exchange also proposes to increase the fees charged for a CMI Login ID and FIX Login ID to $500 per month for regular access and $1000 per month for Sponsored User access. Firms may access C2 via either a CMI Client Application Server or a FIX Port, depending on how their systems are configured. As with the Network Access Port, the Exchange recently made a sizable investment to upgrade the equipment involved in the CMI Client Application Servers and FIX Ports, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. Moreover, these changes are in line with amounts assessed for connectivity at other exchanges. ISE assesses a FIX fee of $1200 for a minimum of two monthly login IDs (so, $600 for one), or a fee of $2,400 for a higher-volume user.[6] The NASDAQ Stock Market LLC's Options Market (''NOM'') assesses a fee of $500 per FIX port per month, as well.[7] CBOE also recently submitted a proposed rule change proposes to increase the fees charged for a CMI Login ID and FIX Login ID to $500 per month for regular access and $1000 per month for Sponsored User access.[8] Regarding the Sponsored User fees, the Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion.

The proposed changes are to take effect January 1, 2012.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4)[10] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders and other persons using Exchange facilities. The proposed change to increase the Maker and Taker rebates for Public Customer complex orders is reasonable because Public Customers will now be receiving a higher rebate than previously. This proposed change is equitable and not unfairly discriminatory because offering a greater rebate for such orders will attract more customer trading volume to the Exchange, and this greater volume and liquidity will benefit all market participants, including those non-Public Customer market participants who will now have more opportunities to trade with Public Customer orders. Further, this proposed change is in line with, and even more competitive than, the proposed fees on ISE for similar transactions.[11]

The proposed change to increase the Network Access Port fees is reasonable because the fees are within the same range as those assessed on other exchanges,[12] and because such increase will assist in recouping expenditures recently made by the Exchange to upgrade the connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. The proposed changes to increase the fees assessed for CMI Login IDs and FIX Login IDs are also reasonable because such fees are within the same range as those assessed on other exchanges,[13] and because such increases will assist in recouping expenditures recently made by the Exchange to upgrade the connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(2) of Rule 19b–4[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–C2–2011–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–041. 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

[5] *See* SR–CBOE–2011–121.

[6] *See* ISE Schedule of Fees, page 8 *and* SR–CBOE–2011–121.

[7] *See* NOM Rule 7053.

[8] *See* SR–CBOE–2011–121.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] *See* ISE Schedule of Fees, page 18.

[12] *See* ISE Schedule of Fees, page 9.

[13] *See* ISE Schedule of Fees, page 8 *and* NOM Rule 7053 *and also* SR–CBOE–2011–121.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–041 and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–97 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66084; File No. SR–ISE–2011–84]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Complex Orders Executed on the Exchange

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 20, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend fees for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend fees charged by the Exchange for certain orders on two of the most actively-traded index option products, the NASDAQ 100 Index option (''NDX'') and the Russell 2000 Index option (''RUT'').

For trading in NDX and RUT, for both regular and complex orders, the Exchange currently charges $0.20 per contract for firm proprietary orders and Customer (Professional Orders), [3] and $0.45 per contract for Non-ISE Market Maker [4] orders. ISE market maker orders [5] in these two symbols are subject to a sliding scale, ranging from $0.01 per contract to $0.18 per contract, depending on the amount of overall volume traded by a market maker during a month. Market makers also currently pay a payment for order flow (PFOF) fee of $0.65 per contract when trading against Priority Customers. Priority Customer orders are not charged for trading in NDX and RUT. Options on NDX and RUT are traded on the Exchange pursuant to a license agreement entered into by the Exchange with index providers for NDX and RUT. In addition to the fees noted above, the Exchange currently charges ISE market maker orders, Non-ISE Market Maker orders and firm proprietary orders $0.22 per contract and $0.15 per contract for NDX and RUT, respectively, to defray the licensing costs. Because of competitive pressures in the industry, certain customer orders are not charged this surcharge fee. The Exchange's current fee schedule notes that Public Customer Orders are excluded from this surcharge fee. Historically, Public Customer orders were synonymous with retail customer orders. The Exchange now distinguishes retail customers from professional customers, the latter being professional traders who are not market makers or broker/dealers but behave the way that market makers and broker/dealers do. Orders from these customers are identified on the Exchange as Professional Orders. Orders from retail customers are identified on the Exchange as Priority Customer orders. Thus, for the sake of clarity, the Exchange proposes to replace the words ''Public'' with ''Priority'' for all the surcharge fees that appear on the Exchange's fee schedule. Thus, Priority Customer orders will remain exempt from this fee, while Professional Orders will be subject to the fee.

The Exchange currently assesses a per contract transaction fee to market participants that add or remove liquidity in the Complex Order Book (''maker/taker fees'') in symbols that are in the Penny Pilot program. Included therein is a subset of 103 symbols that are assessed a slightly higher taker fee (the ''Select Symbols'').[6] Additionally, pursuant to SEC approval which allows market makers to enter quotations for complex order strategies in the Complex Order Book,[7] the Exchange recently adopted maker/taker fees and rebates for orders in the following three symbols: XOP, XLB and EFA.[8]

The Exchange now proposes to extend its maker/taker fees and rebates to complex orders in NDX and RUT. Specifically, for Customer (Professional Orders), firm proprietary and ISE market maker orders, ISE proposes to adopt a ''make'' fee of $0.25 per contract and a ''take'' fee of $0.70 per contract. For Non-ISE Market Maker orders, ISE proposes to adopt a ''make'' fee of $0.25 per contract and a ''take'' fee of $0.75 per contract. For crossing complex orders in NDX and RUT, i.e., orders executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism, and

[3] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* ISR Rule 100(a)(37C).

[4] The term ''Non-ISE Market Maker'' means a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 (the ''Act'') registered in the same options class on another options exchange. *See* Schedule of Fees, page 4.

[5] The term ''market makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[6] The Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

[7] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[8] *See* Securities Exchange Act Release No. 65958 (December 15, 2011) (SR–ISE–2011–81).

for Qualified Contingent Cross orders, the Exchange currently charges a fee of $0.20 per contract. The Exchange proposes to continue charging a fee of $0.20 per contract for crossing complex orders in NDX and RUT. The Exchange currently does not charge Priority Customers for crossing orders executed in NDX and RUT. The Exchange proposes to continue not charging Priority Customers for crossing orders executed in NDX and RUT. For responses to special orders,[9] ISE proposes to adopt a fee of $0.70 per contract for Customer (Professional Orders), firm proprietary and ISE market maker orders. For Non-ISE Market Maker orders, ISE proposes to adopt a fee of $0.75 per contract for responses to special orders in NDX and RUT.

Further, for Priority Customer complex orders in symbols that are in the Penny Pilot program, the Exchange currently provides a per contract rebate when these orders trade with non-customer orders in the Complex Order Book. The Exchange proposes to extend this rebate incentive for NDX and RUT also. As such, the Exchange proposes to adopt a rebate of $0.50 per contract for Priority Customer complex orders in NDX and RUT when these orders trade with non-customer orders in the Complex Order Book.

The Exchange currently provides ISE market makers with a two cent discount when trading against orders that are preferenced to them. The Exchange proposes to extend this discount for preferenced complex orders in NDX and RUT. Accordingly, ISE market makers who remove liquidity in NDX and RUT from the Complex Order Book will be charged $0.68 per contract when trading with orders that are preferenced to them.

With the proposed migration of NDX and RUT to the Exchange's complex order maker/taker pricing structure, the Exchange proposes to no longer charge a PFOF fee for complex orders in these two symbols. The cancellation fee, however, which only applies to Priority Customer orders, will continue to apply.

As the Exchange is proposing to adopt a new table for this proposed fee change, the Exchange notes that:

- Fees for orders in NDX and RUT executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.
- Complex orders in NDX and RUT executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.
- As noted above, the PFOF fees will not be collected for complex orders in NDX and RUT.
- As noted above, the cancellation fee, which only applies to Priority Customer orders, will continue to apply to NDX and RUT.
- The Exchange currently has a fee cap, with certain exclusions, applicable to transactions executed in a member's proprietary account. The cap also applies to crossing transactions for the account of entities affiliated with a member. The Exchange also has a service fee applicable to all QCC and non-QCC transactions that are eligible for the fee cap.[10] This fee cap will continue to apply to executions of complex orders in NDX and RUT.
- The Exchange currently has tiered rebates to encourage members to submit greater number [sic] of QCC orders and Solicitation orders to the Exchange. Once a member reaches a certain volume threshold in QCC orders and/or Solicitation orders during a month, the Exchange provides a rebate to that member for all of its QCC and Solicitation traded contracts for that month.[11] These tiered rebates will continue to apply.
- As noted above, the Exchange currently charges a license surcharge fee of $0.22 per contract and $0.15 per contract for trading in options on NDX and RUT, respectively. This license surcharge will continue to apply to all orders except for Priority Customer orders.

With this proposed rule change, all non-customer orders will be assessed similar fees, thus eliminating the gap that currently exists between market makers and non-market makers when trading complex orders today. The proposed fees are consistent with the fees and rates of payment for order flow commonly applied to symbols that are not part of the Penny Pilot program. At the proposed levels, ISE market makers will in fact see their fees lowered compared to current levels, which include a transaction fee and a $0.65 per contract PFOF fee, while at the same time equitably distributing the costs of attracting complex orders. The Exchange's maker/taker fees and rebates for complex orders in Penny Pilot symbols has proven to be an effective method of attracting order flow to the Exchange. The Exchange believes that extending its maker/taker fees and rebates for complex orders to NDX and RUT, which are two of the most actively-traded index option products, will assist the Exchange in recovering lost market share in these two products. The Exchange believes this proposed rule change will also serve to enhance the Exchange's competitive position and enable it to attract additional complex order volume in these two symbols because both NDX and RUT are high-priced index options and a very substantial portion of the volume traded in high-priced index options occurs in complex orders.

The Exchange also proposes to make a non-substantive, clarifying change in two footnotes on the Exchange's Schedule of Fees. Specifically, the Exchange recently adopted language in footnotes 7 and 12 on pages 19 and 20 of the Exchange's current Schedule of Fees, respectively, related to rebates and fees for certain complex orders executed on the Exchange.[12] The Exchange now proposes to add the words 'Priority Customer' in front of 'orders' to clarify that ISE market makers will receive a discounted rate when they trade against Priority Customer orders that are preferenced to them.

The Exchange proposes to make these fee changes operative on January 3, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in NDX and RUT in the Complex Order Book.

The Exchange believes it is reasonable and equitable to charge all market

[9] A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. This fee applies to Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) interest.

[10] *See* Securities Exchange Act Release No. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR–ISE–2011–13).

[11] *See* Securities Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR–ISE–2011–68); 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR–ISE–2011–70); and 65898 (December 6, 2011), 76 FR 77279 (December 12, 2011) (SR–ISE–2011–78).

[12] *See* Securities Exchange Act Release No. 65958 (December 15, 2011) (SR–ISE–2011–81).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

participants (except Priority Customers) trading in complex orders in NDX and RUT a standardized 'make' fee of $0.25 per contract. The Exchange currently charges a standardized 'make' fee of $0.32 per contract for complex orders in certain symbols when these orders trade against Priority Customer orders.[15] The Exchange further believes it is reasonable and equitable to charge ISE market maker, firm proprietary and Customer (Professional) orders a 'take' fee of $0.70 per contract ($0.75 per contract for Non-ISE Market Maker orders) for complex orders in NDX and RUT because the Exchange is seeking to recoup the cost associated with paying an increased rebate of $0.50 per contract to these market participants. The Exchange believes it is reasonable and equitable to charge ISE market maker, firm proprietary and Customer (Professional) orders a fee of $0.70 per contract ($0.75 per contract for Non-ISE Market Maker orders) when such members are responding to special orders because a response to a special order is akin to taking liquidity, thus the Exchange is proposing to adopt an identical fee for taking liquidity in these two symbols. The Exchange has historically maintained a differential in the fees it charges ISE market makers from those it charges to Non-ISE Market Makers. The Exchange believes it is reasonable and equitable to treat these two groups of market participants differently because each has different commitments and obligations to the Exchange. ISE market makers, in particular, have quoting obligations and pay the Exchange non-transaction fees. Non-ISE Market Makers do not have any such obligations or financial commitments.

The Exchange further believes it is reasonable and equitable for the Exchange to charge a fee of $0.20 per contract for complex orders in NDX and RUT executed in the Exchange's various auctions and for Qualified Contingent Cross orders because these fees are identical to the fees the Exchange currently charges for similar orders in the symbols that are subject to the Exchange's maker/taker fees.

Additionally, the Exchange believes its proposed fees remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. For example, the $0.70 per contract complex order 'take' fee in NDX and RUT proposed by the Exchange for market maker, firm proprietary and Customer (Professional) orders remains lower than that charged by the Boston Options Exchange (''BOX''). For a similar order, BOX charges both a transaction fee, which ranges anywhere from $0.13 per contract to $0.25 per contract, and a fee for adding liquidity in non-Penny Pilot classes of $0.65 per contract, for an 'all-in' rate of $0.90 or more per contract.[16]

The Exchange believes that it is reasonable and equitable to provide a rebate for Priority Customer complex orders when these orders trade with non-customer orders in the Complex Order Book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides this rebate and is now proposing to increase the rebate for NDX and RUT, which the Exchange believes will attract greater order flow of complex orders in these two symbols.

The Exchange also believes that it is reasonable and equitable to provide a two cent discount to ISE market makers on preferenced orders because this will provide an incentive for market makers to quote in the Complex Order Book.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to members and their customers. The Exchange believes that adopting maker/taker fees and rebates for complex orders in NDX and RUT will attract additional complex order business in these two symbols. The Exchange further believes that the proposed fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other option exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[17] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

[15] *See* Securities Exchange Act Release No. 65958 (December 15, 2011) (SR–ISE–2011–81).

[16] *See* BOX Fee Schedule, Sections 4 and 7.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR–ISE–2011–84. 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 a.m. and 3 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–ISE–2011–84 and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–99 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66085; File No. SR–Phlx–2011–180]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section I of the Exchange's Fee Schedule titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' specifically to amend the Select Symbols.[3]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the list of Select Symbols in Section I of the Exchange's Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' in order to attract additional order flow to the Exchange.

[3] The term ''Select Symbols'' refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Section I of the Exchange's Fee Schedule.

The Exchange displays a list of Select Symbols in its Fee Schedule at Section I, ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' which are subject to the rebates and fees in that section. The Exchange is proposing to delete Market Vectors Semiconductor ET (''SMH'') from the list of Select Symbols. SMH would be subject to the rebates and fees in Section II of the Fee Schedule entitled ''Equity Options Fees.''[4]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove SMH from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying the fees in Section II of the Fee Schedule to SMH, including the opportunity to receive payment for order flow, will attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove SMH because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule, which would not include SMH. Also, all market participants would be uniformly subject to the fees in Section II, which would include SMH.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[4] Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2011–180 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–180. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–180 and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–100 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66090; File No. SR–OCC–2011–19]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Clearance and Settlement of Over-the-Counter Options

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder[2] notice is hereby given that on December 20, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. On January 3, 2012, OCC filed Amendment No. 1 to the proposed rule change. The propose rule change as amended by Amendment No. 1 is described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to provide central clearing of OTC options beginning in the first quarter of 2012.

II. Self-Regulatory Organization'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) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to allow OCC to provide central clearing of OTC options beginning in the first quarter of 2012. OCC will clear the proposed OTC options in a manner that is highly similar to the manner in which it clears listed options, with only such modifications as are appropriate to reflect the unique characteristics of OTC options.

OTC Options

The initial OTC options to be cleared by OCC will consist of options on equity indices published by Standard & Poor's Financial Services LLC (''S&P'').[3] OCC has entered into a license agreement with S&P that allows OCC to clear OTC options on the S&P 500 Index, the S&P MidCap 400 Index and the S&P Small Cap 600 Index. OCC may clear OTC options on other indices and on individual equity securities in the future. OTC options will have predominantly common terms and characteristics, but also include unique terms negotiated by the parties. Transactions in OTC options will not be executed through the facilities of any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC indicated that if it intends to clear additional non-S&P OTC products it will file a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Act. Telephone conference between Steve Szarmack, Vice President and Associate General Counsel, OCC, and Pamela Kesner, Special Counsel, Securities and Exchange Commission Division of Trading and Markets on December 22, 2011.

exchange, but will instead be entered into bilaterally and submitted to OCC for clearance through one or more providers of trade affirmation services.[4]

OTC options will be similar to exchange-traded standardized equity index options called ''FLEX Options'' that are currently traded on certain options exchanges.[5] FLEX Options are exchange-traded put and call options that allow for customization of certain terms. For example, FLEX index Options traded on the Chicago Board Options Exchange have six customizable terms: (1) underlying index, (2) put or call, (3) expiration date, (4) exercise price, (5) American or European exercise style, and (6) method of calculating settlement value. OCC is the issuer and guarantor of FLEX Options and clears FLEX Options traded on multiple exchanges.

Similar to FLEX Options, a limited number of variable terms of OTC options will be allowed for customization, with a specified range of values that may be assigned to each, as agreed between the buyer and seller. Parties submitting transactions in OTC options for clearing by OCC will be able to customize six discrete terms: (1) Underlying index[6] (2) put or call; (3) exercise price; (4) expiration date; (5) American or European exercise style; and (6) method of calculating exercise settlement value on the expiration date.[7] The variable terms and permitted values will be specified in the proposed Section 6 of Article XVII of the By-Laws. With respect to future OTC options accepted for clearing, OCC intends that such future OTC options will conform to the general variable terms and limits on the variable terms set forth in proposed Section 6 of the By-Laws, and will either amend the Interpretations and Policies thereunder to specify additional requirements for specific OTC options or publish such requirements on OCC's Web site.

Clearing of OTC Options

OCC proposes to clear OTC options subject to the same basic rules and procedures used for the clearance of listed index options. The proposed rules require that the counterparties to the OTC options must be eligible contract participants (''ECPs''), as defined in Section 3a(65) of the Securities Exchange Act of 1934, as amended (the ''Exchange Act'') and Section 1a(18) of the Commodity Exchange Act, as amended (the ''CEA'').[8] Because an OTC option will be a ''security'' as defined in the Exchange Act of 1934, the proposed rules also require that the transactions be cleared through a clearing member of OCC that is registered with the Commission as a broker-dealer or one of the small number of clearing members that are ''non-U.S. securities firms'' as defined in OCC's By-Laws.[9] OCC is not proposing to require clearing members to meet any different financial standards for clearing OTC options. However, clearing members must be specifically approved by OCC to clear OTC options in order to assure operational readiness.

Exercise of an OTC option will be settled by payment of cash by the assigned writer and to the exercising holder through OCC's cash settlement system on the business day following exercise in exactly the same manner as is the case with exercise settlement of listed index options. As in the case of listed index options, the exercise-settlement amount will be equal to the difference between the current value of the underlying interest and the exercise price of the OTC option, times the multiplier that determines the size of the OTC option. In the case of OTC index options on the S&P 500, the multiplier will be fixed at 1. The multipliers for additional OTC index options that OCC may in the future clear may be fixed at such value as OCC determines and provides for in its By-Laws and Rules.

OCC will calculate clearing margin for the OTC options using its STANS margin system on the same basis as for listed index options. Because OCC currently clears listed options on all three of the underlying indexes on which OCC is currently licensed to clear OTC options, and because the customizable terms of these OTC options are relatively limited and the range of values that customizable terms may be given is limited, OCC does not believe that valuation and risk management for these OTC options present any difficult challenges. Nevertheless, as discussed further below, OCC is proposing a special close-out rule to be used in the unlikely event that OCC would be unable to close out positions in OTC options of a failed clearing member through existing procedures.

OTC options may be carried in a clearing member's firm account, in market-maker accounts or in its securities customers' account, as applicable. Although customer positions in OTC options will be carried in the securities customers' account (an omnibus account), OCC will use a ''customer ID'' to identify positions of individual customers based on information provided by clearing members.[10] However, positions are not presently intended to be carried in individual customer sub-accounts, and positions in OTC options will be margined at OCC in the omnibus customers' account on the same basis as listed options. If a clearing member takes the other side of a transaction with its customer in an OTC option, the transaction will result in the creation of a long or short position (as applicable) in the clearing member's customers' account and the opposite short or long position in the clearing member's firm account. The positions could also be includable in the internal cross-margining account, subject to any necessary regulatory approvals.

The trade data of an OTC option trade will be entered into the system of MarkitSERV or another trade affirmation vendor approved by OCC for this purpose (the ''OTC Trade Source''). OCC will permit additional OTC Trade Sources in the future in response to sufficient market demand from OCC's clearing members and subject to the ability of any such OTC Trade Source to meet OCC's requirements for operational readiness and interoperability with OCC's systems, as well as requirements with respect to relevant business experience and reputation, adequate personnel and expertise, financial qualification and such other factors as OCC deems relevant. The trade may be affirmed through one of two methods: (i) both

[4] The initial provider of the trade affirmation services in connection with the OTC options will be MarkitServ.

[5] Note that FINRA Rule 2360(a)(16) refers to FLEX Options as ''FLEX Equity Options'', which it defines as ''any options contract issued, or subject to issuance by, The Options Clearing Corporation whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contract is traded.'' OCC does not believe this definition would capture OTC options as they are not traded on any exchange. Nevertheless, as discussed below, OCC is working with FINRA to amend certain of FINRA's rules to clarify the proper application of such rules to OTC options.

[6] Initially, however, the S&P 500 Index will be the only permitted underlying index.

[7] The expiration date of an OTC option must fall on a business day. The method of determining the exercise settlement value of an OTC option on its expiration date may be either the opening settlement value or the closing settlement value of the underlying index (calculated by S&P using the opening or closing price, as applicable, in the primary market of each component security of the underlying index on the specified expiration date), in each case as reported to OCC by CBOE.

[8] *See* proposed Section 6(f), Article XVII of the By-Laws.

[9] *See* proposed Interpretation and Policy .10 of Section 1, Article V of the By-Laws.

[10] Such customer IDs are necessary in order to allow OCC to comply with certain terms of OCC's license agreement with S&P. As described further below, customer IDs will be used for other purposes as well.

sides of the trade enter the trade details into the system of the OTC Trade Source and the trade details are compared and matched by the OTC Trade Source; or (ii) one party to the trade enters the trade details into the system of the OTC Trade Source and the other party to the trade then views the information and affirms it if it is correct. Whichever method is used, OCC will receive a matched trade from the OTC Trade Source. Note that, in either case, the OTC Trade Source merely acts as a messaging system among the parties and OCC to affirm the terms that are agreed to by the parties bilaterally and to transmit that information to OCC. It will be permissible for parties to submit trades for clearance that were entered into bilaterally at any time in the past, provided that the eligibility for clearance will be determined as of the date the trade is submitted to OCC for clearance.[11] The OTC Trade Source will process the trade and submit it as a matched trade to OCC for clearing. If OCC accepts the trade, OCC will so notify the OTC Trade Source, which will notify the submitting parties. Customers of clearing members may have direct access to the OTC Trade Source for purposes of entering or affirming trade data and receiving communications regarding the status of transactions, in which case mechanisms will be put in place for a clearing member to authorize a customer to enter a trade for the clearing member's customers' account or for the clearing member to affirm a trade once entered.

In order for a clearing member to be approved for clearing OTC options, the clearing member must enter into a standard agreement with MarkitServ (or another OTC Trade Source, if and when OCC enters into arrangements with other OTC Trade Sources). At launch, OTC options will not be subject to the same clearing member trade assignment rules and procedures through which exchange-traded options can be cleared by a clearing member other than the executing clearing member. This functionality may be added at a later date. OCC and MarkitSERV will adopt procedures to permit a customer that has an account with Clearing Member A (''CM A'') to enter into an OTC option transaction with Clearing Member B (''CM B'') and have the position included in its account at CM A and cleared in CM A's customers' account at OCC.

[11] OCC's license agreement with S&P imposes certain minimum requirements relating to time remaining to expiration of the OTC option, as detailed in proposed Interpretation and Policy .01 of Section 6, Article XVII of the By-Laws.

OTC options will be fungible with each other to the extent that there are OTC options in the system with identical terms. However, OCC will not treat OTC options as fungible with index options listed on any exchange, even if an OTC option has terms identical to the terms of the exchange-listed option.

Clearing members that carry customer positions in cleared OTC options will be subject to all OCC rules governing OCC-cleared options generally, as well as all applicable rules of the SEC and of any self-regulatory organization, including the Financial Industry Regulatory Authority (''FINRA''), of which they are a member.

Regulatory Status of the OTC Options

An OTC option will be a ''security'' as defined in both the Securities Act of 1933, as amended (the ''Securities Act'') and, as noted above, the Exchange Act. OCC will be the ''issuer'' of the OTC options. The OTC options will be neither ''swaps'' nor ''security-based swaps'' for purposes of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank'').[12]

Most of OCC's clearing members are members of FINRA and subject to FINRA's rules, which have different provisions for ''listed'' and ''OTC options'' and contain various definitions distinguishing between the two. In some cases, OTC options would fall into neither category under FINRA's definitions and in other cases, they would fall within what OCC perceives to be the wrong category. OCC has suggested to FINRA that it amend certain of its rules to clarify the proper application of such rules to cleared OTC options.

Proposed By-Law and Rule Changes

The specific proposed changes to OCC's By-Laws and Rules to provide for the clearing of OTC options relate primarily to: (i) Specification of customizable terms; (ii) procedures for submission and acceptance of trades for clearance; and (iii) specification of criteria for eligibility of clearing members to clear transactions in OTC options and limitation of the types of customers for whom clearing members may effect transactions in OTC options.

[12] Section 1a(47)(A)(i) of CEA, as added by Section 721(a)(21) of Dodd-Frank, defines ''swaps'' broadly to include options on indices. However, Section 1a(47)(B)(iii) of the CEA excludes from the ''swap'' definition any option on any index of securities that is subject to the Securities Act and the Exchange Act. A contract that is excluded from the definition of a ''swap'' under Section 1a(47)(B) (other than Section 1a(47)(B)(x)) is not a ''security-based swap'' for purposes of Section 3a(68) of the Exchange Act.

Otherwise, the currently proposed OTC options will be cleared and settled under the same provisions applicable to clearance of listed index options. Many of the proposed amendments are self-explanatory, and we have therefore attempted to confine the following discussion to a broad overview with specific explanation only where the reasons for the change may be less obvious.

Article I of the By-Laws contains defined terms used throughout the By-Laws and Rules. OCC proposes to modify certain existing definitions and include certain new definitions in order to incorporate OTC options into existing rules and facilitate the creation of new provisions unique to OTC options. Throughout the By-Laws and Rules, OCC proposes to replace the term ''Exchange transaction,'' which is currently defined in Article I, in relevant part, as ''a transaction on or through the facilities of an exchange for the purchase, writing or sale of a cleared contract'' with the term ''matched trade'' so as to make the relevant portions of the By-Laws and Rules applicable to transactions in OTC options as well as listed options. ''Matched trade'' is proposed to be defined in Article I to include transactions ''effected on or through the facilities of an exchange'' or ''affirmed through the facilities of an OTC Trade Source'' in order to include transactions in both listed options and OTC options. The current definition of ''matched trade'' in Rule 101 is proposed to be deleted as unnecessary given the new definition. Much of the length of this rule filing is attributable to the fact that the term ''Exchange transaction'' is used so many places in the rules. OCC has entered into agreements in the past which reference the term ''Exchange transaction'' or ''exchange transaction.'' OCC is also proposing to add an Interpretation and Policy to the new definition of ''matched trade'' in order to avoid any ambiguity concerning how such terms should be interpreted in any such agreement.

OCC proposes to add a new Interpretation and Policy .10 to Section 1 of Article V of the By-Laws, providing the additional criteria that must be met by a Clearing Member in order to clear OTC index options. Among these new criteria are that Clearing Member seeking to clear OTC index options on underlying indices published by Standard & Poor's Financial Services LLC (''S&P'') must execute and maintain in effect a short-form license agreement in such form as specified from time to time by S&P. The current form of S&P

short-form index license agreement is attached hereto as Exhibit A.

The Interpretations and Policies under Section 1, Article VI allow clearing members to adjust their positions with OCC for certain enumerated reasons. OCC proposes to amend the Interpretations and Policies to clarify that, consistent with industry conventions in the OTC markets, adjustment of positions in OTC options will be effected through a manual process (as opposed to the electronic process available to post-trade adjustments in listed options), to the extent permitted by OCC. For the same reason, OCC is proposing to amend Rule 403 to prohibit clearing member trade assignment (''CMTA'') transactions in OTC options. Trade ''give-ups'' that are effected through the CMTA process in the case of listed options will, in the case of OTC options, be effected through MarkitSERV before the trades are submitted to OCC for clearing.

Article XVII of the By-Laws governs index options in general and OCC is proposing amendments to Article XVII in order to set forth the terms applicable to the initial OTC options proposed to be cleared by OCC—options on equity indices published by S&P—and to differentiate OTC index options from other index options cleared by OCC. For example, certain amendments to the definitions are necessary because OTC options will be permitted to have a much wider range of expiration dates and expiration times than exchange-traded options. Additional definitional amendments ensure that OTC index options will constitute a separate class of options from other cash-settled index options even if both index options have the same terms and cover the same underlying interest.

Section 3 of Article XVII provides for adjustment of the terms of outstanding index options as necessary to reflect possible changes in the underlying index—such as those creating a discontinuity in the level of the index—that could theoretically make an adjustment necessary to protect the legitimate expectations of holders and writers of options on the index. Pursuant to paragraph (g) of Section 3, most but not all such adjustments would be made, in the case of listed index options, by an adjustment panel consisting of representatives of the exchanges on which the options are traded. In the case of OTC options, any such adjustments will be made by OCC in its sole discretion. However, in exercising that discretion, OCC may take into consideration adjustment made by the adjustment panel with respect to exchange-traded options covering the same underlying index.[13]

OCC proposes to add a new Section 6 to Article XVII to set forth certain provisions unique to OTC index options, including the variable terms allowed for OTC index options and the general limitations on such variable terms. In general, all OTC index options must conform to the terms and limitations set forth in Section 6, and additional specific requirements applicable to specific OTC index options will either be set forth in the Interpretations and Policies under Section 6 or published separately on OCC's Web site. Section 6 also makes clear that although OTC index options are not fungible with exchange-traded index options, OTC index options of the same series (*i.e.,* options having identical terms) will be fungible with each other. In addition to the terms and limitations applicable to OTC index options, Section 6 will establish that clearing members will be deemed to have made a number of representations and warranties in connection with their activities in OTC options each time they affirm a matched trade entered into an OTC Trade Source.

Chapter IV of the Rules sets forth the requirements for reporting of matched trades to OCC, and Rule 401 thereunder governs reporting of transactions in listed options by participant Exchanges. OCC is proposing to add new Rule 404 to govern the details of reporting of matched trades in OTC options by an OTC Trade Source.

As discussed above, positions in OTC options will generally be margined in the same manner as positions in listed options using STANS and pursuant to Chapter VI of the Rules. However, OCC proposes to amend Rule 611 to establish different procedures for the segregation of long positions in OTC options for margining purposes. Long positions in listed options are held in a clearing member's customers' account or firm non-lien account and by default are deemed to be ''segregated,'' meaning that they are not subject to OCC's lien and are given no collateral value when determining the margin requirement in the account. Such positions may be unsegregated only when a clearing member instructs OCC to unsegregate a long position and represents to OCC that the long position is part of a spread transaction carried for a single customer whose margin requirement on the corresponding short position has been reduced in recognition of the spread. OCC will then unsegregate the long position and so reduce OCC's margin requirement. However, in case of long positions in OTC options that are carried in a clearing member's customers' account and for which OCC has received a customer ID, OCC proposes that it will automatically unsegregate such long positions if OCC identifies a qualifying short position in OTC options carried under the same customer ID. Clearing members will not be required to give an affirmative instruction to OCC to unsegregate a long position in OTC options or make a separate representation regarding the spread transaction. Instead, by carrying a qualifying spread position in a customer account, clearing members are deemed to have represented to OCC that the customer's margin has been reduced in recognition of the spread. Based on discussion with the clearing members, it is OCC's understanding that, in practice, broker-dealers reduce customers' margin requirements to reflect spread positions. Therefore, OCC believes that automatic recognition of such spreads by OCC together with the deemed representation will greatly increase operational efficiency while providing equal assurance that long positions in OTC options will be unsegregated only if an identified customer will receive the benefit of the reduced margin required for spread transactions.

Rule 1001 sets forth the amount of the contribution that each clearing member is required to make to the clearing fund. OCC proposes to amend Rule 1001(c) so that, for purposes of calculating the daily average number of cleared contracts held by a clearing member in open positions with OCC during a calendar month (which number is used in turn to determine the clearing member's contribution to the clearing fund), open positions in OTC options will be adjusted as needed to account for any differences between the multiplier or unit of trading with respect to OTC options relative to non-OTC options covering the same underlying index or interest so that OTC options and non-OTC options are given comparable weight in the computation.[14]

In general, the rules in Chapter XI governing the suspension of a clearing member will apply equally to clearing members that transact in OTC options. Rule 1106 provides broad authority for

[13] Because index options, unlike options on individual stocks, rarely, if ever, require adjustments, allocation of the adjustment authority may have little practical significance.

[14] For example, the index multiplier applicable to OTC index options on the S&P 500 Index will be fixed at 1. *See* proposed Interpretation and Policy .01 of Section 6, Article XVII of the By-Laws. In comparison, the index multiplier applicable to listed index options is 100.

OCC to close out open positions in options carried by a suspended clearing member ''in the most orderly manner practicable.'' OCC is proposing to amend Rule 1106 to add an additional provision with respect to positions in OTC options. The Commission has recently approved an OCC rule change providing OCC the authority to use an auction process as one of the means by which OCC may close out open positions in listed options carried by a suspended clearing member.[15] OCC anticipates it will use this auction process for OTC options as well. As an additional protection, however, OCC is proposing to amend Rule 1106 to give OCC the authority, in extraordinary circumstances, to fix a liquidation value for open OTC options positions of a suspended clearing member if OCC determines that fixing a close-out value is the most orderly manner of closing out such positions. This procedure would mean that one or more clearing members having the opposite side of options of the same series as those held by the defaulting clearing member could have their positions involuntarily closed out and would be required to accept or pay the close-out value of the positions as determined by OCC. OCC anticipates that the likelihood of having to exercise this authority is small, and that the authority would only be exercised in the event that OCC is unable to find a counterparty willing to purchase, or assume the obligations of, open long and short positions of the suspended clearing member at an appropriate value either through the regular OTC market or through the auction process. Nevertheless, in view of the fact that positions in OTC index options are expected to be large and that there may be no active trading market in options with terms precisely identical to the terms of the OTC index options in question, OCC believes that this is an appropriate failsafe provision.

OCC believes that the proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Exchange Act because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

[15] *See* Securities Exchange Act Release 65654 (October 28, 2011), 76 FR 68238 (November 3, 2011).

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

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.

Electronic Comments

- Use the Commissions 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–2011–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2011–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_19_a_1.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–2011–19 and should be submitted on or before January 30, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–112 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66086; File No. SR–Phlx–2011–181]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Access Service Fees

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the following Access Service Fees: (i) the Trading/Administrative Booths and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Market Maker Trading Space Fee; (ii) the Specialist Post Fee; and (iii) the Floor Facility Fee. The Exchange proposes to delete the following Access Service Fees: (i) the Shelf Space on Equity Option Trading Floor Fee; and (ii) Kiosk Construction Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is amend the following Access Service Fees: (i) the Trading/Administrative Booths and Market Maker Trading Space Fee; (ii) Specialist Post Fee and (iii) Floor Facility Fee to keep pace with rising overhead costs associated with maintaining the trading floor. In addition, the Exchange proposes to delete the Shelf Space on Equity Option Trading Floor Fee and the Kiosk Construction Fee because these fees are not relevant and the Exchange has absorbed such costs, respectively. Each fee will be described below separately.

Trading/Administrative Booths and Market Maker Trading Space Fee

The Exchange is proposing to amend the name of the ''Trading/Administrative Booths and Market Maker Trading Space'' Fee to the ''Trading/Administrative Booths'' Fee. The Trading Post/Booth space is physical space on the Exchange's trading floor, which space typically is used by floor brokers and clearing firms. The Exchange is proposing changes to the Floor Facility Fees, described in more detail below, and therefore is amending the name of the Trading/Administrative Booths and Market Maker Trading Space Fee to reflect the changes described below. Registered Options Traders [3] and SQTs [4] would be assessed the Floor Facility Fee, instead of this fee. Any floor participant may elect to obtain a booth on the Exchange's trading floor. The Exchange is not proposing to amend the fee rate of the Trading/Administrative Booths Fee.

Specialist Post Fee

The Exchange proposes to amend the current fee structure for a Specialist Post and instead assess a $3,000 fee for such a post. Currently, Specialist Post Fees vary with the size of the post. Specialist units are assessed a Specialist Post Fee of $1,125 per month for a quarter post and $4,500 per month for a full post with a maximum fee of $4,500 per month. The Exchange proposes modifying the fee structure for a Specialist Post to assess the fee equally to all Specialist units. Each individual Specialist would also be assessed a Floor Facility Fee, as described below, which costs together (the Specialist Post Fee and the Floor Facility Fee) would assist the Exchange in recouping increasing occupancy costs, such as electricity usage due to the increase of member computers on the trading floor. The Exchange believes that the $3,000 Specialist Post Fee is consistent with costs incurred by the Exchange for the usage of space on the Exchange's trading floor [5] by Specialists.

Floor Facility Fee

The Exchange proposes to increase the Floor Facility Fee from $200 per month to $300 per month. Currently, the Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booths and Market Maker Trading Space Fee. The Floor Facility Fee is intended to fairly allocate costs attendant to providing members with services necessary to the conduct of business on the floor of the Exchange. The Exchange proposes to increase this fee to offset the increased costs of operating a trading floor facility. In addition to increasing this fee, the Exchange proposes to apply the Floor Facility Fee to ROTs, SQTs and individual Specialists [6] located on the Exchange's trading floor. Today, a ROT and SQT are assessed the Trading/Administrative Booths and Market Maker Trading Space Fee and an individual Specialist is not assessed such a fee. The Exchange also proposes to remove the qualifier that the Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booth or Market Maker Trading Space. Rather, ROTs, SQTs and individual Specialists on the Exchange's trading floor would be assessed a Floor Facility Fee. If a ROT or SQT also determined to acquire a Trading/Administrative Booth, they would also be assessed that fee as well. Each individual Specialist would be assessed this fee and the Specialist unit would be assessed the Specialist Post Fee. In the instance that an individual Specialist is also an SQT, that member will only pay a $300 Floor Facility Fee per month; that Specialist would not be assessed the fee for each capacity.

Shelf Space on Equity Option Trading Floor

The Exchange maintained various fees on its Fee Schedule relating to XLE, the Exchange's equity trading system. The Exchange ceased operation of the technology used to operate XLE on October 24, 2008 and filed a proposal to amend the administration and enforcement of certain rules.[7] The Exchange also filed to delete XLE Fee Schedule and references to XLE fees

[3] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[4] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[5] There are some Specialist units that currently pay a $1,125 Specialist Post Fee that would experience an increased fee with the proposed $3,000 fee rate, however these Specialist units comprise less than two percent of the Specialist Units.

[6] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). A Specialist Unit would be assessed the Specialist Post Fee and the individual Specialist would be assessed the Floor Facility Fee.

[7] *See* Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR–Phlx–2008–65). The Exchange later filed to delete various Rules relating to XLE. *See* Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR–Phlx–2011–13).

from the Fee Schedule.[8] The Shelf Space on Equity Option Trading Floor Fee should have been deleted along with the other XLE fees. This fee inadvertently remained on the Fee Schedule. The Exchange proposes to delete this outdated fee.

Kiosk Construction Fee

The Exchange proposes to amend the Fee Schedule to eliminate the Kiosk[9] Construction Fee. This fee was adopted in 2002 to require individual Specialists and Specialist units to pay for the cost of construction of a kiosk if the Specialist unit initiates the construction request.[10] The Exchange has not assessed this fee since approximately 2008. The Exchange has determined to absorb this cost in the few circumstances that it believes any construction would be necessary going forward. The Exchange proposes to eliminate the Kiosk Construction Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that it is reasonable to amend its Trading/Administrative Booths Fee to eliminate the requirement that a market maker, which includes a ROT and a SQT in this case, pay the $300 monthly fee. The Exchange also believes that it is reasonable to apply the Floor Facility Fees to ROTs, SQTs and individual Specialists and increase that fee to $300. Finally, the Exchange believes that it is reasonable to assess all Specialist Units a Specialist Post Fee of $3,000 instead of a fee based on the size of the post. The revenue from these fees would assist the Exchange in defraying the occupancy costs of maintaining the trading floor. The Exchange also believes that it is reasonable to assess ROTs and SQTs the Floor Facility Fee instead of the newly named ''Trading/Administrative Booths'' Fee in order that market makers retain their own fee category. There is no impact in terms of the amount such ROTS and SQTs will be assessed because both fees, the Trading/Administrative Booths Fee and the Floor Facility Fee, will be $300. Finally, the Exchange believes that removing the qualifier that the Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booth is reasonable because these fees are meant to apply to different types of market participants. In the event that a ROT or SQT determined that they would also require a booth, the Exchange believes that the use of the booth should be a separate fee from the Facility Fee.

The Exchange also believes that the fee amendments to the newly named Trading/Administrative Booths Fee, Specialist Post Fee and Floor Facility Fees are equitable and not unfairly discriminatory because the Specialist Post Fees are higher because Specialists generate higher occupancy costs from electricity usage and other facility usage as compared to other floor participants. The Specialist Post Fee combined with the Floor Facility Fee would allow the Exchange to cover such costs as cleaning, HVAC and general maintenance. All other floor members would be assessed the Floor Facility Fee of $300 per month to conduct business on the Exchange's trading floor. The Exchange believes these fees are indicative of the costs attributable to each category of participant. In addition, the amendment to the Specialist Post Fee would cause all Specialist units to be uniformly assessed the same fee. All individual Specialists would also be uniformly assessed a $300 Floor Facility Fee, which would be equal to the Trading/Administrative Booths Fee paid by floor brokers and clearing firms, also $300 per month. Only a small number of Specialist units would pay a higher cost for Specialist Posts. When combining the Specialist Post Fee and Floor Facility Fee some Specialists units/Specialists would experience a higher fee overall, which fees are consistent with increased costs to maintain the Exchange's trading floor. Other Specialist units/Specialists would experience a lower fee overall. Finally, the Exchange believes that removing the qualifier that the Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booth is equitable and not unfairly discriminatory because all members would be billed equally for each service based on their participation and requests for space.

The Exchange believes that eliminating the outdated Shelf Space on Equity Option Trading Floor Fee is reasonable, equitable and not unfairly discriminatory because there is no longer an equity trading floor and the fee inadvertently remained on the Fee Schedule after the shutdown of XLE. Similarly, the Exchange believes that eliminating the Kiosk Construction Fee is reasonable, equitable and not unfairly discriminatory because the Exchange has recently not received any requests for construction and has determined to absorb such costs in the future if such construction is necessary. By eliminating this fee, no member on the Exchange's trading floor would be assessed for such a cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] *See* Securities Exchange Act Release No. 59030 (December 1, 2008), 73 FR 74548 (December 8, 2008) (SR–Phlx–2008–80).

[9] A kiosk is an open, flat surface that contains computer terminals and allows the Specialist units to face the trading crowd.

[10] *See* Securities Exchange Act Release No. 458470 (April 20, 2002), 67 FR 30409 (May 6, 2002) (SR–Phlx–2002–30).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–181 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–181. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–181 and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–111 Filed 1–6–12; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66083; File No. SR–CME–2011–19]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Comply With New CFTC DCO Regulations

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2011, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes to amend certain of its rules to comply with new CFTC Regulations 39.16(d) (Insolvency of a clearing member) and 39.15(d) (Transfer of customer positions), respectively. The text of the proposed rule change is below. The italicized text indicates additions. Bracketed text indicates deletions.

CME Rulebook

Rule 100—Rule 441—No Change.

Chapter 4. Enforcement of Rules

Rule 442. NOTIFICATION OF SIGNIFICANT EVENTS

Each Member shall *provide* immediate[ly] *notice to* [fy] the Market Regulation Department *(and each Member that is a Member Firm or a Clearing member shall also provide immediate notice to the Clearing House),* in writing upon becoming aware of any of the following events relating to such Member:

1. any suspension, expulsion, revocation or restriction of such Member's trading privileges or any fine in excess of $25,000, through an adverse determination, voluntary settlement or otherwise, by any court, commodity or securities exchange or related clearing organization, the Securities and Exchange Commission, the Commodity Futures Trading Commission or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, the National Futures Association, the Financial Industry Regulatory Authority, Inc. or any self-regulatory or regulatory organization;

2. any indictment of the Member or any of its officers for, any conviction of the Member or any of its officers of, or any confession of guilt or plea of guilty or nolo contendere by the Member or any of its officers to 1) any felony or 2) any misdemeanor involving, arising from, or related to the purchase or sale of any commodity, security, futures contract, option or other financial instrument or involving or arising from fraud or moral turpitude; and/or

3. any *filing of* a [involuntary] bankruptcy petition *or insolvency, receivership or equivalent proceeding of which the member is a subject.* [that has been filed against such Member, or *i*] *In* the case of a voluntary bankruptcy*, insolvency, receivership or equivalent* proceeding*, the Member also shall notify* the Market Regulation Department*, and the Clearing House in the case of a Member that is a Member Firm or Clearing Member)* when such Member [has filed or has] form*s*[ed] a definite intention to file *such* proceeding [for bankruptcy].

Nothing in this Rule shall limit or negate any other reporting obligations that any member may have to the Exchange or any other regulator or person.

* * * * *

Rule 443–Rule 852—No Change.

Chapter 8. Clearing House and Performance Bonds

Rule 853. TRANSFERS OF TRADES *AND CUSTOMER ACCOUNTS*

853.*A. *Transfers of Trades

1. Subject to the limitations of Rule 854, existing trades may be transferred either on the books of a clearing member or from one clearing member to another clearing member provided:

i[1]. The transfer merely constitutes a change from one account to another account provided the underlying beneficial ownership in said accounts remains the same; or

ii[2]. An error has been made in the clearing of a trade and the error is discovered and the transfer is completed within two business days after the trade date.

[B]*2.* Subject to the limitations of Rule 854, Exchange staff may, upon request by the clearing member(s), approve a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

transfer of existing trades either on the books of the same clearing member, or from the books of one clearing member to the books of another clearing member if the transfer is in connection with, or as a result of, a merger, asset purchase, consolidation or similar non-recurring transaction between two or more entities where one or more entities become the successor in interest to one or more other entities.

3[C]. Exchange staff may, with the consent of the clearing member(s) involved, permit the transfer of existing trades if, in staff's opinion, the situation so requires and such transfer is in the best interests of the Exchange.

4[D]. Provided that the transfer is permitted pursuant to Sections *1*[A]., 2[B]. or 3[C]. above, transactions in all physically delivered futures contracts except for FX futures contracts must be recorded and carried on the books of the receiving firm at the original trade dates; all other transactions may be recorded and carried at either the original trade date or the transfer date. Futures transactions may be transferred using either the original trade price or the most recent settlement price; options transactions may be transferred using either the original trade price or a trade price of zero.

[E]*5.* All transfers shall be reported to the Clearing House in a form acceptable to the Exchange for the type of transactions involved. The proper indicator must be included in the transfer such that the transactions, including the transaction(s) to reverse an error, clear as transfers. The clearing members involved shall maintain a full and complete record of all transactions together with all pertinent memoranda.

853.B. Transfers of Customer Accounts

1. Subject to the limitations of Rule 853.A, after receipt of a signed instruction from a Clearing Member (the ''Carrying Clearing Member'') to transfer all or a portion of a customer account to another Clearing Member (the ''Receiving Clearing Member''), and provided that such instruction contains the customer's name and account number (and, if the transfer is not of the entire account, a description of which portion is to be transferred), and provided that the Receiving Clearing Member agrees to accept the account, the Exchange shall promptly transfer the account (or the relevant portion thereof), without requiring any close-out or rebooking of positions in connection with the transfer, provided that:

i. The transferred positions will satisfy Exchange performance bond requirements at the Receiving Clearing Member; and

ii. Any remaining positions in the customer account at the Carrying Clearing Member will satisfy Exchange performance bond requirements.

* * * * *

Rule 854–End—No Change.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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 III below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to amend certain of its rules to comply with new CFTC Regulations 39.16(d) (Insolvency of a clearing member) and 39.15(d) (Transfer of customer positions). The new CFTC regulations were part of a comprehensive set of principle-based regulations adopted by the CFTC that establish certain standards of compliance for derivatives clearing organizations (''DCOs'') like CME.

New CFTC Regulation 39.16(d), which becomes effective on January 9, 2011, requires each DCO to have a rule that requires clearing members to provide prompt notice to the DCO if the clearing member becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent. New CFTC Regulation 39.15(d), also effective on January 9, 2012, requires each DCO to have rules providing that the DCO will promptly transfer all or a portion of a customer's account from one clearing member to another, provided that the conditions in the Regulation are satisfied. In order to comply with these CFTC requirements, CME proposes to amend current CME Rules 442 and Rule 853 as set forth above. CME will consider whether any future changes would be necessary to the language of CME Rule 853 to the extent CME begins clearing securities products. The proposed effective date for these revisions is January 4, 2012.

CME also made a filing, CME Submission 11–491, with its primary regulator, the Commodity Futures Trading Commission, with respect to the proposed rule changes.

CME believes the proposed changes are consistent with the requirements of the Exchange Act. CME, a DCO, is required to implement the proposed changes to comply with recent changes to CFTC regulations. CME notes that the policies of the Commodity Exchange Act (''CEA'') with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2011–19 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC, 20549–1090.

All submissions should refer to File Number SR–CME–2011–19. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2011–19 and should be submitted on or before January 30, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

In its filing, CME requested that the Commission approve this request on an accelerated basis for good cause shown. CME cites the reason for granting this request on an accelerated basis as CME's operations as a DCO, subject to regulation by the CFTC under the CEA. These rule changes are being made according to regulations promulgated by the CFTC, which were previously subject to notice and comment. Not approving this request on an accelerated basis will have a significant impact on CME's operations as a DCO.

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule changes are consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency because it should allow CME to enhance its risk management efforts, both in motoring the financial status of clearing members and porting customer accounts among clearing members.[5]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[6] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because the proposed rule change institutes the regulations of another regulatory agency, and those regulations were subject to notice and comment.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2011–19) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–98 Filed 1–6–12; 8:45 am]

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[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66081; File No. SR–OCC–2011–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to DCO 60 Day Regulations

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2011, Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The Options Clearing Corporation (''OCC'' or the ''Corporation'') proposes to amend its By-Laws and Rules as set forth below in order to ensure OCC's technical compliance with final regulations promulgated by the Commodity Futures Trading Commission (''CFTC'') applicable to derivatives clearing organizations (''DCOs''). Material proposed to be added to OCC's By-Laws and Rules as currently in effect is italicized and material proposed to be deleted is enclosed in bold brackets.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * * * *

ARTICLE VI

CLEARANCE OF EXCHANGE TRANSACTIONS

* * * * *

General Clearance Rule

SECTION 1. [no change]

...Interpretations and Policies

.01–.02 [no change]

.03 (a) Except as otherwise provided in the By-Laws or Rules (including Chapter XI thereof), the Corporation will promptly transfer all or any portion of a carrying Clearing Member's segregated futures customer account maintained in accordance with Section 3(f) of this Article VI or segregated futures professional account maintained in accordance with Section 3(j) of this Article VI, and will, at the same time, transfer related funds (if any) upon the request of the carrying Clearing Member and the confirmation of the receiving Clearing Member that it will accept such transfer, provided that the request for transfer and confirmation of transfer are received by the Corporation in accordance with the procedures and within such timeframes as required by the Corporation.

(b) Any transfer effected pursuant to this Interpretation and Policy .03 shall be subject to such policies and procedures as the Corporation determines are reasonably necessary for the protection of the Corporation, other Clearing Members, customers and the general public and the Corporation may refuse any transfer request that does not comply with such policies and procedures.

(c) Any carrying Clearing Member requesting a transfer pursuant to this Interpretation and Policy .03 shall be deemed to have represented to the Corporation that: (1) such transfer is being made upon the instruction of the customer of the carrying Clearing Member to make such transfer, (2) the customer instructing the carrying Clearing Member to transfer its positions is not currently in default to the carrying

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Clearing Member, and (3) any remaining positions of the customer will have appropriate margin at the carrying Clearing Member.

(d) Any receiving Clearing Member consenting to a transfer of positions in accordance with Interpretation and Policy .03 shall be deemed to have represented to the Corporation that the transferred positions will have appropriate margin at the receiving Clearing Member.

(e) No transfer of positions between Clearing Members pursuant to this Interpretation and Policy .03 shall require the close-out or re-booking of the positions.

(f) The Corporation may refuse to effect a transfer pursuant to this Interpretation and Policy .03 if doing so would result in any account of the carrying or receiving Clearing Member having margin assets less than the Corporation deems necessary.

(g) Any transfer effected pursuant to this Interpretation and Policy .03 shall be deemed to have been completed at such time as (1) position reports provided to the receiving Clearing Member indicate that the transferred position(s) is/are in the appropriate account of the receiving Clearing Member and (2) the transfer of any related funds has been finalized.

RULES

* * * * *

CHAPTER VI

MARGINS

* * * * *

Form of Margin Assets

RULE 604. (a)–(c) [no change]

(d) Funds and securities held by or subject to the instructions of the Corporation as margin shall, subject to the rights of the Corporation in respect thereof, remain the property of the respective Clearing Members for whose accounts such funds and securities are held. Funds and securities deposited in respect of a segregated futures account shall be held in accordance with the provisions of Section 4d of the Commodity Exchange Act and regulations thereunder. All other funds held by the Corporation as margin (other than funds invested by the Corporation pursuant to subsection (a) of this Rule and funds credited by the Corporation to a Liquidating Settlement Account pursuant to Chapter XI) shall be deposited to the credit of the Corporation in an account or accounts, designated as Clearing Member **[**trust**]** *margin* accounts, with such banks, trust companies or other depositories as the Board of Directors may select. Such funds shall not be commingled with funds of the Corporation or used by the Corporation as working capital. To the extent that funds held by the Corporation as margin are invested by the Corporation in securities pursuant to subsection (a) of this Rule, the Corporation shall maintain records clearly identifying such securities as held in trust for Clearing Members. The Corporation shall have the right to commingle funds and securities held as margin for the account of any Clearing Member with funds and securities held as margin for other Clearing Members.

(e)–(f) [no change]

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CHAPTER XI

SUSPENSION OF A CLEARING MEMBER

* * * * *

Notice to Corporation

Rule 1101. A Clearing Member that is unable to meet its obligations, **[or] is insolvent**, *or becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent* **shall immediately notify the Corporation by telephone** *of such event* **[that it is unable to meet its obligations or is insolvent].** Such notice shall be confirmed in writing promptly by said Clearing Member.

Suspension

Rule 1102. (a) The Board of Directors or the Chairman of the Corporation may summarily suspend any Clearing Member which: (i) has been and is expelled or suspended from any self-regulatory organization (as defined in Section 3(a) of the Securities Exchange Act of 1934, as amended, but not including the Municipal Securities Rulemaking Board, or as defined in the rules of the Commodity Futures Trading Commission); (ii) **[**is in default of**]** *fails to make* any delivery of **[**funds or**]** *cash,* securities *or other property* to the Corporation *in a timely manner as required by the By-Laws or Rules;* (iii) **[**is in default of**]** *fails to make* any delivery of funds or securities to another Clearing Member required pursuant to the By-Laws or Rules; (iv) **[**is in default of**]** *fails to make* any delivery of funds or securities to the correspondent clearing corporation *in a timely manner,* has appointed an Appointed Clearing Member to act on its behalf and such Appointed Clearing Member **[**is in default of**]** *fails to make* any delivery of funds or securities to the correspondent clearing corporation *in a timely manner* or effects settlement at the correspondent clearing corporation through an identifiable subaccount in an account of CDS at the correspondent clearing corporation and CDS **[**is in default of**]** *fails to make* any delivery of funds or securities to the correspondent clearing corporation *in a timely manner;* (v) is in such financial or operating difficulty that the Board of Directors or the Chairman of the Corporation determines and so notifies the appropriate regulatory agency for such Clearing Member (or, in the case of a Non-U.S. Clearing Member, the appropriate Non-U.S. Regulatory Agency) and the Securities and Exchange Commission or the Commodity Futures Trading Commission that suspension is necessary for the protection of the Corporation, other Clearing Members, or the general public; or (vi) in the case of a Non-U.S. Clearing Member, has been and is expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange or clearing organization of which it is a member. In addition, the Corporation may summarily suspend any Clearing Member in accordance with Rule 707. In the event that any Clearing Member is suspended, the Corporation shall cease to act for it except as hereinafter specified.

(b) [no change]

... Interpretations and Policies

.01 The occurrence of any of the events described in Rule 1102 shall constitute an event of ''default'' with respect to a Clearing Member.

Creation of Liquidating Settlement Account

Rule 1104

(a)–(d) [no change]

(e) For the avoidance of doubt, any margin assets in the firm lien account of a Clearing Member that has been suspended pursuant to Rule 1102 may be applied to cover losses with respect to such Clearing Member's segregated futures account(s) if the assets in such segregated futures accounts are insufficient to cover a shortfall in such accounts.

(f) For the avoidance of doubt, nothing in this Chapter XI or in any other provision of the By-Laws or Rules of the Corporation shall prevent the Corporation from transferring positions, cash, securities or other property carried in a segregated futures account of a defaulting Clearing Member to a non-defaulting Clearing Member at the direction of or with the consent of the transferring Clearing Member's

representative or pursuant to an order of a court of competent jurisdiction.

* * * * *

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose 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 III below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed changes to OCC's By-Laws and Rules is to ensure technical compliance with final regulations of the Commodity Futures Trading Commission (''CFTC'') applicable to derivatives clearing organizations (''DCOs'') that become effective on January 9, 2012. The CFTC's final regulations implement many of the core principles applicable to DCOs under the Commodity Exchange Act.

The Final DCO Regulations

On October 18, 2011, the CFTC held an open meeting at which it issued final regulations implementing many of the new statutory core principles for DCOs enacted under the Dodd-Frank Act. While certain of these final regulations go into effect on May 7, 2012 and November 8, 2012, the majority of the final regulations go into effect on January 9, 2012. While OCC is already in compliance with most of the final regulations that go into effect on January 9, 2012, OCC believes it appropriate to clarify certain of its rules to ensure technical compliance with the CFTC's rules as described herein.

Safekeeping of Funds

CFTC Rule 39.15(c) requires each DCO to ''hold funds and assets belonging to clearing members and their customers in a manner which minimizes the risk of loss or of delay in the access by the derivatives clearing organization to such funds and assets.'' OCC Rule 604(d) provides that funds held by OCC as margin, other than funds and securities deposited in a segregated futures account, funds invested by OCC under Rule 604(a) and funds credited by OCC to a liquidating settlement account ''shall be deposited to the credit of the Corporation in an account or accounts, designated as Clearing Member trust accounts, with such banks, trust companies or other depositories as the Board of Directors may select.'' The designation of such accounts as ''trust accounts'' was originally intended to clarify that funds and securities held as margin remain the property of the depositing clearing member, subject to OCC's security interest in such assets, and that those assets, unlike clearing fund deposits, cannot be applied to defaults of other clearing members. However, as the term ''trust'' could potentially cause uncertainty and delay in obtaining the release of these assets to OCC, OCC is amending Rule 604(d) to replace the word ''trust'' with the word ''margin.''

Transfer of Customer Positions

CFTC Rule 39.15(d) requires a DCO to have ''rules providing that the derivatives clearing organization will promptly transfer all or a portion of a customer's portfolio of positions and related funds at the same time from the carrying clearing member of the derivatives clearing organization to another clearing member of the derivatives clearing organization, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to the following conditions: (1) The customer has instructed the carrying clearing member to make the transfer; (2) The customer is not currently in default to the carrying clearing member; (3) The transferred positions will have appropriate margin at the receiving clearing member; (4) Any remaining positions will have appropriate margin at the carrying clearing member; and (5) The receiving clearing member has consented to the transfer.'' Although OCC Interpretation and Policy .01(a) currently provides that ''it is the policy of the Corporation to permit a Clearing Member to submit adjustments to its positions with the Corporation to (1) effect a transfer of accounts between Clearing Members,'' no provision of OCC's bylaws or rules specifically addresses the technical requirements of CFTC Rule 39.15(d) with respect to futures customer positions. In order to avoid any doubt about OCC's compliance with this rule, OCC is proposing to add an additional Interpretation and Policy .03 to Section 1 of Article VI of its By-Laws to address the technical requirements of the referenced CFTC Rule.

CFTC Rule 39.16(c)(2) requires each DCO to ''adopt rules that set forth its default procedures, including * * * (i) [t]he derivatives clearing organization's definition of a default [and] (ii) [t]he actions that the derivatives clearing organization may take upon a default, which shall include the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable.'' Although OCC Rule 1102(a) provides a list of the grounds for suspension of a clearing member, those grounds are not expressly referred to as events of ''default,'' and OCC's By-Laws and Rules do not define the term ''default.'' OCC is therefore proposing to amend Rule 1102 to remove the word ''default'' from such rule and replace it with substantive provisions indicating the specific grounds for suspension of a clearing member, as well as to adopt a new Interpretation and Policy .01 that would expressly define the events listed in Rule 1102 as events of ''default'' with respect to a Clearing Member. In addition, OCC is proposing to add a new Rule 1104(f) to expressly provide that customer positions may be transferred in the event of a clearing member default.

Use of House Funds To Cover Customer Defaults

CFTC Rule 39.16(c)(2)(vi) requires each DCO to adopt rules including a ''provision that the excess house funds and assets of a defaulting clearing member shall be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall.'' While it is true that assets of a clearing member in a clearing member's firm lien account may be so applied under OCC's existing By-Laws and Rules, there is no provision in OCC's Rules relating to the liquidation of a suspended clearing member that specifically mirrors the language of CFTC Rule 39.16(c)(2)(vi). OCC is therefore adding a new paragraph (e) to Rule 1104 to more closely track the requirement of the CFTC rule.

Notice of Clearing Member Insolvency

CFTC Rule 39.16(d) requires each DCO to ''adopt rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent.'' Although OCC Rule 1101 requires a clearing member that is ''unable to meet its obligations or is insolvent [to] immediately notify the Corporation,'' it is possible for a clearing member to become the subject of a bankruptcy petition without being unable to meet its obligations or actually being insolvent. OCC is therefore proposing to amend Rule 1101 to require a clearing member to notify OCC if the clearing

member is the subject of a bankruptcy, receivership or equivalent proceeding.

* * *

The proposed changes are consistent with Section 17A of the Securities Exchange Act of 1934, as amended, because they are designed to permit OCC to perform clearing services for certain products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. In addition, as a CFTC-registered DCO, OCC is required to comply with the CFTC's core principles applicable to DCOs. The proposed rule change is not inconsistent with any rules of OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov.* Please include File No. SR–OCC–2011–18 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2011–18. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. 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–2011–18 and should be submitted on or before January 30, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

In its filing, OCC requested that the Commission approve this request on an accelerated basis for good cause shown. OCC cites the reason for granting this request on an accelerated basis as OCC's operations as a DCO, subject to regulation by the CFTC under the CEA and that these rule changes are being made according to regulations promulgated by the CFTC, which were previously subject to notice and comment. Not approving this request on an accelerated basis will have a significant impact on OCC's operations as a DCO.

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to OCC. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow OCC to comply with new CFTC regulatory requirements, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.[5]

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[6] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register** because as a registered DCO OCC is required to comply with the new CFTC regulations by the time they become effective on January 9, 2012.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–OCC–2011–18) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–96 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66080; File No. SR–FINRA–2011–073]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Establishing a Governmental Accounting Standards Board Accounting Support Fee

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt Section 14 to Schedule A of the FINRA By-Laws to establish an accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (''GASB'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The GASB was established in 1984 by agreement of the Financial Accounting Foundation (''FAF'') and ten national associations of state and local government officials as an independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments.[3] The GASB is recognized by governments, the accounting industry, and the capital markets as the source for the development and publication of the generally accepted accounting principles (''GAAP'') for state and local governments.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law by President Obama on July 21, 2010.[4] As added by Section 978 of the Dodd-Frank Act, Section 19(g) of the Securities Act of 1933 (''Securities Act'') gives the SEC the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB (''GASB Accounting Support Fee'') and to draft the rules and procedures necessary to equitably assess the GASB Accounting Support Fee on the association's members.[5] On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.[6]

In response to the SEC's order of May 11, 2011, FINRA is proposing new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) to Schedule A of the FINRA By-Laws to establish the GASB Accounting Support Fee. After considering multiple ways to assess the GASB Accounting Support Fee on its members and issuing *Regulatory Notice* 11–28 requesting comment on the GASB Accounting Support Fee, the proposed rule change assesses the fee based on members' municipal securities trading volume reported to the Municipal Securities Rulemaking Board (''MSRB''). FINRA believes that basing the GASB Accounting Support Fee on reliable and timely reporting data will ensure the accuracy of the fee and that using transaction data to apportion the fee will result in a fair and equitable assessment across FINRA members. However, because FINRA is statutorily prohibited from collecting amounts in excess of GASB's recoverable annual budgeted expenses and because a transaction-based fee is inherently variable due to the unpredictability of transaction volume, FINRA is proposing a quarterly assessment based on GASB's annual budget.[7] Under proposed Section 14, the GASB Accounting Support Fee will be allocated among FINRA members on a quarterly basis based on municipal securities transactions reported to the MSRB. Specifically, each calendar quarter, each FINRA member would be required to pay an assessment to FINRA of its portion of one quarter of the annual GASB Accounting Support Fee amount that reflects the member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB under MSRB Rule G–14(b)[8] in the previous calendar quarter. For example, if GASB's recoverable annual budgeted expenses for a given year were $10 million, FINRA would collect $2.5 million from its members each quarter. Each member's fee would be based on the member's proportion of municipal securities transactions (based on the par value of reported transactions, not their price) reported by all FINRA members to the MSRB in the previous calendar quarter.[9] Thus, for example, if a member reported transactions to the MSRB in a given quarter that accounted for 10% of the total par value amount of transactions reported by all FINRA members during the quarter, the member's assessment would be 10% of one quarter of GASB's annual budget (in the above example, the member's quarterly assessment would be $250,000 (*i.e.,* 10% of $2.5 million)).

To exclude members with de minimis transactions in municipal securities in a given quarter from being assessed the fee, FINRA is proposing that members with a quarterly assessment of less than $25 would not be charged the fee for that quarter. Any amounts originally assessed to those members would be reallocated among the members with an assessment that quarter of $25 or more based on the member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB.

As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA will be remitted to the FAF[10] and used to

[3] The GASB is not a government entity. It is an operating component of the FAF, which is a private-sector, not-for-profit entity. Funding for the GASB comes in part from sales of publications and in part from state and local governments and the municipal bond community. Its standards are not Federal laws or regulations, and the GASB does not have enforcement authority. *See Facts About GASB, http://gasb.org.*

[4] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[5] *See* 15 U.S.C. 77s(g). For purposes of the GASB Accounting Support Fee, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the FAF. *See* 15 U.S.C. 77s(g)(2). FINRA anticipates that the GASB's annual budget will include an administrative fee to FINRA. The administrative fee is intended to cover FINRA's costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee, and the amount will be negotiated with the FAF each year. For the initial year, the administrative fee will be $50,000.

[6] Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011).

[7] Section 19(g)(4) of the Securities Act, as added by the Dodd-Frank Act, prohibits FINRA from collecting GASB Accounting Support Fees for a fiscal year in excess of GASB's recoverable annual budgeted expenses. *See* 15 U.S.C. 77s(g)(4).

[8] MSRB Rule G–14(b) sets out municipal securities transaction reporting requirements.

[9] If a member does not engage in reportable municipal securities transactions during a particular calendar quarter, the member would not be subject to the GASB Accounting Support Fee for that quarter.

[10] *See* 15 U.S.C. 77s(g)(1).

support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments.[11] In accordance with Section 19(g)(5)(B) of the Securities Act, collection of the GASB Accounting Support Fee shall not be construed to provide the SEC or FINRA direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of GAAP by the GASB.[12]

As FINRA noted in *Regulatory Notice* 11–28, because some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions, FINRA proposes to publish a *Regulatory Notice* each year disclosing the total annual GASB Accounting Support Fee FINRA will collect for that year. In this annual *Notice,* FINRA also anticipates setting out an estimated fee rate (per $1,000 par value) based on the GASB recoverable annual budgeted expenses reported to FINRA for that year and historical municipal security trade reporting volumes so that firms will have some basis on which to establish a fee should they choose to do so. The *Notice* will also remind any firms choosing to pass along the fee of the need for proper disclosure of the GASB Accounting Support Fee, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, any disclosure used by the firm cannot be misleading and must comport with FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

The effective date of the proposed rule change will be the date of SEC approval. The initial fees assessed on members will be based on trading activity reported in the calendar quarter during which the SEC approves the proposed rule change. For example, if the proposed rule change is approved on February 1, 2012, FINRA will bill members based on trading activity from January 1, 2012, to March 31, 2012, to cover one quarter of GASB's 2012 budget. As a result, depending on the date of SEC approval, the proposed GASB fee may only cover a portion of the 2012 GASB budget.

2. Statutory Basis

The proposed rule change is being filed in response to the SEC's order of May 11, 2011, which was issued pursuant to Section 19(g) of the Securities Act. Section 19(g) gives the SEC the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB and to draft the rules and procedures necessary to equitably assess the GASB Accounting Support Fee on the association's members. On May 11, 2011, the SEC exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[13] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that, given the restrictions in Section 19(g) of the Securities Act regarding the specific amount FINRA must collect, a quarterly transaction-based assessment with a limited exception for firms with a de minimis amount of reportable municipal securities transactions is a fair and equitable manner to assess the fee. FINRA also believes that the $25 per quarter exemption threshold strikes an appropriate balance between exempting those firms with truly de minimis transactions and not imposing an undue burden on other firms to recover the amount that would be assessed on the exempt firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 11–28 (June 2011). A copy of the *Regulatory Notice* is attached as Exhibit 2a to the proposed rule change. The comment period expired on August 1, 2011. FINRA received eleven comment letters in response to the *Regulatory Notice.*[14] A list of the comment letters received in response to the *Regulatory Notice* is attached as Exhibit 2b to the proposed rule change. Copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c to the proposed rule change. Of the eleven comment letters received, five were generally in favor of the proposed rule change and six were generally opposed.

Several commenters expressed the view that broker-dealers, and specifically FINRA members, should not be forced to shoulder the entire burden of funding the GASB because many other market participants, issuers, and other people who benefit from GASB accounting standards are not registered broker-dealers or FINRA members.[15] For example, one commenter stated that ''many other end users of GASB's accounting and financial reporting standards * * * get a 'free ride' under FINRA's proposed methodology.'' [16] Another commenter suggested that a proportionate share of the revenue necessary to fund the GASB come from municipal financial advisors, which are registered with the SEC and the MSRB, although not always with FINRA.[17] Another commenter suggested that the MSRB, rather than FINRA, should

[11] *See* 15 U.S.C. 77s(g)(3). Specifically, FINRA anticipates establishing a separate bank account specifically for the GASB Accounting Support Fee and will coordinate with the FAF to establish a process by which FINRA will wire the funds into the FAF account for the GASB Accounting Support Fee. Given the separate bank account, FINRA will provide monthly account reconciliations and accounts receivable aging reports, which will be reviewed by FINRA management each month and will be available for review by FAF and GASB management upon request.

[12] *See* 15 U.S.C. 77s(g)(5)(B).

[13] 15 U.S.C. 78*o*–3(b)(5).

[14] *See* Letter from Brown & Brown Financial Services, Inc., dated July 5, 2011 (''B&B''); letter from Third Party Marketers Association, dated July 26, 2011 (''3PM''); letter from NPB Financial Group, LLC, dated July 27, 2011 (''NPB''); letter from City of Bay City, Michigan, dated July 28, 2011 (''Bay City''); letter from Bond Dealers of America, dated August 1, 2011 (''BDA''); letter from Government Finance Officers Association, dated August 1, 2011 (''GFOA''); letter from National Association of State Auditors, Comptrollers and Treasurers, dated August 1, 2011 (''NASACT''); letter from Roosevelt & Cross Incorporated, dated August 1, 2011 (''R&C''); letter from Securities Industry and Financial Markets Association, dated August 1, 2011 (''SIFMA''); letter from National Association of Independent Broker/Dealers, dated August 2, 2011 (''NAIBD''); letter from Hartfield Titus & Donnelly, LLC, dated August 11, 2011 (''HT&D'').

[15] *See* BDA, HT&D, NAIBD, SIFMA, R&C.

[16] *See* SIFMA. The commenter specifically identified non-debt issuing municipalities, financial advisors, banks, bank dealers, insurance companies, rating agencies, mutual funds, legislative/governmental staff, and taxpayer organizations. *See also* HT&D.

[17] *See* NAIBD.

administer the fee because bank dealers are members of the MSRB but are not members of FINRA.[18]

Although FINRA recognizes the concerns raised by the commenters regarding the specification of FINRA members as the funding source for the GASB, Section 19(g) of the Securities Act, under which the SEC issued its order, substantially limits the parameters of the GASB Accounting Support Fee. Section 19(g)(1)(B) of the Securities Act provides that the SEC may require a registered national securities association [19] to assess and collect the accounting support fee ''from the members of the association.'' [20] Consequently, the order issued by the SEC pursuant to Section 19(g) of the Securities Act requires FINRA to collect the GASB Accounting Support Fee from its members, and FINRA has no authority to collect the fee from non-FINRA members.[21]

Three commenters expressed concern that there was no independent oversight of the GASB's annual budget and asserted that this lack of oversight provides no incentive for transparency or fiscal discipline.[22] One commenter noted that the recent Government Accountability Office report on the GASB [23] observed that some stakeholders ''were concerned with the level and nature of GASB's expenditures—such as the amounts spent on staff salaries and office space—as well as a perceived lack of transparency associated with its budget process.'' [24]

The commenters are correct that although FINRA has been ordered to assess and collect the GASB Accounting Support Fee, FINRA has no authority under Section 19(g) of the Securities Act to review the GASB's budget. In fact, Section 19(g)(5)(B)(i) of the Securities Act specifically provides that collection of the GASB Accounting Support Fee does not provide FINRA with any direct or indirect oversight of the budget or technical agenda of the GASB.[25]

One commenter [26] suggested that FINRA has not met the statutory requirement in Section 19(g)(1)(B) of the Securities Act that it consult with certain groups when establishing the rules and procedures regarding the GASB Accounting Support Fee.[27] The commenter claims that ''FINRA did not consult with any state and local government associations before submitting a notice for public comment regarding the rules and procedures for establishing the GASB fee.'' The commenter also asserts that ''Section 978 of the [Dodd-Frank Act] expressly requires prior consultation with the 'principal organizations representing State governors, legislators, local elected officials, and State and local finance officers.' ''

Contrary to the commenter's conclusion that FINRA failed to consult with the specified organizations, FINRA departed from its standard practice and provided nineteen different organizations representing State governors, legislators, local elected officials, and State and local finance officers with a draft of *Regulatory Notice* 11–28 before the *Notice* was published for public comment.[28] In addition, after receipt of the GFOA comment letter, FINRA participated in a conference call with representatives of GFOA, NASACT, NASBO, and the NGA where those groups reiterated the issues set forth in the GFOA and NASACT comment letters. Moreover, FINRA's publication of a *Regulatory Notice* requesting comment on a proposal before it is filed with the SEC is itself an additional form of consultation. Indeed, two organizations representing state and local finance officers submitted formal comment letters expressing their views on the proposal.[29] To provide a further opportunity for all interested parties (including those organizations specified in Section 19(g) of the Securities Act) to raise any concerns and express their views, FINRA has elected to file the proposed rule change for full notice and comment under Section 19(b) of the Act.[30] Given the multiple forms of consultation that have taken place regarding the proposed rule change, FINRA has met the consultation requirements set forth in Section 19(g) of the Securities Act.

One commenter questioned the administrative fee GASB will pay to FINRA for calculating, assessing, and collected the GASB Accounting Support Fee.[31] As FINRA noted in *Regulatory Notice* 11–28, FINRA has negotiated an administrative fee with the FAF of $50,000 for the initial year that the GASB Accounting Support Fee is in place that is intended to cover FINRA's estimated costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee. The commenter asserted that the fee was ''unwarranted'' because ''FINRA already has a process for collecting its own Trading Activity Fee from broker dealers, and could easily amend this process to include the GASB Accounting Support Fee.'' [32] The commenter also suggested that the MSRB could administer the fee for minimal costs if FINRA moves forward with a fee based on underwritings or transactions.

The commenter's statements are misplaced, and FINRA disagrees that the fee is unwarranted. The commenter's analogy to FINRA's Trading Activity Fee (''TAF'') is inappropriate for several reasons.

First, FINRA does not believe that the use of a self-reporting model like the TAF is appropriate for the GASB Accounting Support Fee.[33] FINRA believes that the transaction information available through the MSRB serves as a

[18] *See* SIFMA.

[19] FINRA is the only national securities association registered with the Commission.

[20] 15 U.S.C. 77s (g)(1)(B).

[21] FINRA estimates that over 95 percent of municipal transactions reported to the MSRB are reported by FINRA members.

[22] *See* BDA, HT&D, SIFMA.

[23] *See* Report of the United States Government Accountability Office, *Dodd-Frank Wall Street Reform Act: Role of the Governmental Accounting Standards Board in Municipal Securities Markets and its Past Funding* (January 18, 2011), available at *http://www.gao.gov/new.items/d11267r.pdf.*

[24] *See* SIFMA.

[25] *See* 15 U.S.C. 77s(g)(5)(B)(i).

[26] *See* GFOA.

[27] Section 19(g)(1)(B) of the Securities Act states that the Commission may require FINRA to ''establish * * * rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the [GASB Accounting Support Fee].'' 15 U.S.C. 77s(g)(1)(B).

[28] Specifically, on Thursday, June 9, 2011, FINRA provided a draft of the *Regulatory Notice* to representatives of the National Governors Association (''NGA''); the Council of State Governments; the National Conference of State Legislatures; the National Association of Counties; the U.S. Conference of Mayors; the National League of Cities; the Association of Government Accountants; the Government Finance Officers Association; the International City/County Management Association; the National Association of State Auditors, Comptrollers and Treasurers (''NASACT''); the National Association of State Budget Officers (''NASBO''); the National Association of State Retirement Administrators; the Native American Finance Officers Association; the National Federation of Municipal Analysts; the Association of Local Government Auditors; the National Association of State Treasurers; the National Council of State Housing Agencies; the National Association of Local Housing Financing Agencies; and the Council of Infrastructure Financing Authorities. The *Notice* was posted publicly on June 16, 2011.

[29] *See* GFOA, NASACT.

[30] Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder permit FINRA to file a proposed rule change for immediate effectiveness if the proposed rule change establishes or changes a due, fee, or other charge. *See* 15 U.S.C. 78s(b)(3)(A); 17 CFR 240.19b–4(f)(2).

[31] *See* SIFMA.

[32] *See* SIFMA.

[33] The TAF is self-reported to FINRA by members on a monthly basis on the clearing firm level. *See* Trading Activity Fee FAQ Q100.5, available at *http://www.finra.org/taf/faq.*

more timely and reliable source of transaction information than self-reported aggregate quarterly data calculated by the various members subject to the fee. Moreover, FINRA believes that requiring self-reporting could increase compliance costs for firms and increase costs to FINRA. As proposed, FINRA will rely on transaction data that is already reported by members to the MSRB (*i.e.,* there will be no increased compliance efforts necessary for members since, as discussed below, FINRA does not believe that the calculations members currently undertake for reporting the TAF would be the same as those for the GASB Accounting Support Fee). For FINRA, a self-reporting model raises two primary complications. First, FINRA would need to audit members to ensure that their self-reporting was accurate and timely, which could increase FINRA's costs in administering the fee. Second, Section 19(g) of the Securities Act requires FINRA to collect exact amounts, thus creating an inability to remedy potential over- or under-payments by members that self-report erroneous data.

Second, FINRA does not believe that the exceptions from the TAF should apply to the assessment of the GASB Accounting Support Fee, and the TAF is currently charged only to the sell side of a transaction. Although municipal securities subject to MSRB reporting requirements are generally subject to the TAF, the TAF rules contain exceptions for certain transactions (*e.g.,* primary market transactions). The goal of the GASB Accounting Support Fee assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is not appropriate to exclude any subset of reportable transactions from factoring into the fee assessment for purposes of allocating the GASB Accounting Support Fee.[34] In addition, and as discussed below, FINRA does not believe it is appropriate to charge only one side of a transaction when two members are involved and are required to report the transaction to the MSRB.

For the foregoing reasons, FINRA does not believe that the TAF would serve as an appropriate model in assessing the GASB Accounting Support Fee. In addition, the amount of the administrative fee to FINRA was negotiated with the FAF and based on estimated costs to FINRA, including initial start-up technology costs, administrative costs, and the costs of personnel and other resources needed to process and implement the fee. FINRA anticipates that the amount of the administrative fee will be reviewed and evaluated each year by FINRA and by the FAF in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and in the context of actual costs incurred by FINRA. Following the review, the amount of the administrative fee will be increased or decreased if necessary.

Commenters expressed opposing views on FINRA's proposal to base the GASB Accounting Support Fee on transactions in municipal securities reported to the MSRB. Although several commenters believed the proposed assessment method was reasonable and equitable,[35] other commenters opposed a transaction-based assessment.[36] Among the objections to the proposal, commenters stated that an assessment based on trade reporting volume would disproportionately affect lead underwriters [37] and brokers' brokers [38] and would result in broker-to-broker transactions being assessed multiple times.[39] In addition, one commenter noted that the proposal ''makes no distinction between bonds issued by GASB obligors, bonds issued by FASB obligors and bonds with obligors who follow neither set of standards.'' [40]

After considering the objections raised by the commenters, FINRA continues to believe that a proportionate fee based on reported trading volume remains a reasonable and fair method to allocate the GASB Accounting Support Fee. As noted above, FINRA believes that using reported transaction data to calculate the fee ensures that the fee is based on accurate, reliable information. Because the fee is assessed on a proportionate basis, rather than being assessed each time a transaction is reported to the MSRB (*e.g.,* a fixed fee charged on each reported transaction like those charged in connection with reporting trades to a FINRA trade reporting facility [41]), there are not multiple assessments on broker-to-broker transactions. Rather, both brokers reporting the same trade will have the volume of that trade factored into their share of total trade reporting volume for that quarter. The goal of the assessment is to equitably allocate a specific amount of money among participants in the municipal securities market; consequently, FINRA believes it is appropriate that both brokers in a broker-to-broker transaction be considered as participating in that market with respect to such a transaction, rather than only use one side of the trade in calculating the fee (*e.g.,* charging only the broker on the sell side). For similar reasons, FINRA also believes that the proposal does not disproportionately affect lead underwriters or brokers' brokers; to the extent such firms have high trading volumes reported to the MSRB under applicable reporting rules, FINRA believes that this accurately reflects those firms' participation in the municipal securities markets, whether those firms act as underwriters, brokers' brokers, or simply as buyers or sellers of municipal securities.[42]

FINRA also declines to distinguish between issues based on whether the obligor has followed FASB standards, GASB standards, or neither. This information is not required to be reported to the MSRB, is not available on an automated basis, and it would be impractical for FINRA to attempt to maintain a comprehensive and accurate listing of those issues where the obligor has followed GASB standards.

Several commenters expressed views concerning the application of the GASB Accounting Support Fee to small firms and the exemption proposed in *Regulatory Notice* 11–28 for firms with a quarterly assessment of less than $25. Two commenters suggested that FINRA increase the quarterly threshold from $25 to $1,000,[43] and one commenter suggested that ''smaller firms'' be exempt from the fee.[44] In contrast, one FINRA member suggested that any firm with a stake in GASB accounting standards should be charged a small assessment, even if the firm had no assessable transactions in a given quarter.[45]

FINRA proposed a quarterly minimum threshold of $25 in order to exempt from the GASB Accounting

[34] *See* Schedule A to the FINRA By-Laws § 1(b).

[35] *See* 3PM, NASACT, Bay City.

[36] *See* HT&D, R&C, SIFMA.

[37] *See* R&C.

[38] *See* HT&D, SIFMA.

[39] *See* SIFMA. The commenter noted that in broker-to-broker transactions, both brokers report the trade to the MSRB.

[40] SIFMA.

[41] *See, e.g.,* FINRA Rules 7620A, 7710.

[42] FINRA notes that basing the GASB Accounting Support Fee on underwriting, rather than transactions, would increase the burden on lead underwriters and would disproportionately affect those market participants engaged in underwriting activities rather than in trading in the secondary market. Moreover, basing the fee on underwriting would wholly exempt secondary market participants from paying the fee and would be assessed only on future municipal issues and would ''grandfather'' in previous issues. FINRA does not believe this is a more equitable way to assess the fee than a transaction-based approach.

[43] *See* 3PM, NAIBD.

[44] *See* BDA. The commenter did not define ''smaller firms'' and stated that it was not in a position to recommend a figure for the exemption because it did not have trading data available to it.

[45] *See* NPB.

Support Fee those firms that do a de minimis amount of trading activity in municipal securities in a given quarter. There are approximately 1,100 FINRA members eligible to conduct business in municipal securities, and FINRA estimates that a de minimis threshold of $25 per quarter would eliminate approximately 600 firms—approximately 55 percent of firms—per quarter from paying the fee. FINRA estimates that raising the level to $1,000 per quarter would exempt approximately 90 percent of the firms reporting transactions to the MSRB from the fee each quarter.

As discussed above, FINRA is required to collect a specific amount of money each year to adequately fund the annual budget of the GASB. Because of this unique requirement, unlike other fees assessed by FINRA, any amount that one member is exempt from paying must be assessed on other members so that FINRA can meet its statutory obligation and collect the total amount needed to adequately fund the GASB's annual budget. Consequently, FINRA believes that a de minimis threshold of $25 per quarter achieves a fair and reasonable balance between exempting those members that do a small amount of trading in municipal securities and ensuring that other members are not shouldering a disproportionate amount of the GASB Accounting Support Fee and being allocated amounts significantly above their proportion of reported trading activity. For the same reasons FINRA is not increasing the quarterly exemption amount, FINRA also declines to adopt an across-the-board ''small firm exemption.''

In *Regulatory Notice* 11–28, FINRA noted that ''some firms may seek to pass the GASB Accounting Support Fee on to customers engaged in municipal securities transactions.'' This was an acknowledgement that, in many instances, members pass through FINRA fees and assessments to their customers. Some commenters expressed concern that members could pass the fee on to issuers of municipal securities and asked FINRA to clarify or mandate that members could not pass the fee along to issuers.[46] Other commenters suggested that FINRA make it easier for members to pass the fee along to customers, including issuers.[47] One commenter suggested that the GASB Accounting Support Fee should be structured as an underwriting assessment because ''[p]rinciples of fundamental fairness would dictate dealers be allowed to pass through any GASB support fee to municipal bond issuers instead of or in addition to investors.''[48]

As discussed above, FINRA continues to believe that an equitable way to structure the fee is through a quarterly assessment based on trading volume with an exception for members whose assessment in a particular quarter would be less than $25. FINRA has long recognized that members pass fees through to the customers whose transactions generate those fees, and FINRA rules generally do not address the commercial allocation of fees between members and their customers, provided such fees are fair, reasonable, and accurately disclosed. Although FINRA is not encouraging members to pass all or part of the GASB Accounting Support Fee to their customers, that decision is ultimately one for each member, subject to the conditions and requirements noted. FINRA also declines to give a blanket exemption for issuers of municipal securities whose transactions may result in an increase to a member's allocation of the GASB Accounting Support Fee. FINRA notes, however, that transactions from a municipal securities issuer to an underwriter are not reported to the MSRB and thus would not generally be counted toward a member's quarterly assessment.[49]

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 (i) as the Commission may designate up to 90 days of such date 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–FINRA–2011–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–073. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–073 and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–84 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[46] *See* Bay City, GFOA, NASACT.

[47] *See* BDA, SIFMA.

[48] SIFMA.

[49] To the extent commenters are concerned that FINRA members acting as underwriters for municipal securities may increase their underwriting fees to recoup part of the assessment, FINRA generally considers fee negotiations between an issuer and an underwriter to be within each party's business decision-making process.

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66078; File No. SR–NASDAQ–2011–173]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for the Trading and Compliance Data Package

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to modify the fees for trading and compliance reports available to member firms via *NasdaqTrader.com* Trading and Compliance Data Package under NASDAQ Rule 7021.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

7021. NasdaqTrader.com Trading and Compliance Data Package Fee

The charge to be paid by a Nasdaq Member for each entitled user receiving Nasdaq Trading and Compliance Data Package via *NasdaqTrader.com* is [$130]*$175* per month (monthly maximum of 25 Historical Research Reports) or [$160]*$225* per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

(a)–(c) No Change

Nasdaq may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify the fees for trading and compliance reports available to member firms via *NasdaqTrader.com* Trading and Compliance Data Package under NASDAQ Rule 7021 (''Data Package''). [sic] Data Package allows member firms to obtain information regarding their own historical quoting and trading activity on NASDAQ. Data Package also provides member firms with information concerning their compliance with NASDAQ and FINRA rules. In this regard, member firms that subscribe to the Data Package can obtain the following reports: (1) Monthly Compliance Report Cards, which outline firm's own compliance with various FINRA rules; (2) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and (3) Historical Research Reports, which provide a variety of historical trading data such as a market maker's quote updates, order activity, and detailed trade reporting information. Additionally, subscribers can elect to receive the detailed trade report (Equity Trade Journal) via a secure FTP dissemination option. These reports offered by NASDAQ are based on the subscribing member's historical trade information taken from NASDAQ and the FINRA/NASDAQ Trade Reporting Facility, thus providing firms with a comprehensive compliance picture.

Use of this service is voluntary and member firms have the option of subscribing to whichever level they choose. The Data Package is offered in two levels: the ''basic'' level, which has a fee of $130 per month, allows access to a maximum of 25 Historical Research Reports per month; and the ''premium'' level, which has a fee of $160 per month, allows access to a maximum of 100 Historical Research Reports per month. These fees have not increased since June 2006,[3] notwithstanding that NASDAQ subsequently developed and implemented enhancements to the service.[4]

In order to help cover the costs associated with the maintenance of the Data Package service, as well as the cost of implementing enhancements to the service, NASDAQ proposes to increase the ''basic'' level subscription fee from $130 to $175 per month, and increase the ''premium'' level subscription fee from $160 to $225 per month. NASDAQ anticipates that the proposed fees may provide NASDAQ with a profit, in addition to covering costs discussed above.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. NASDAQ believes that the proposed fees are reasonable because NASDAQ has made several enhancements to the service since it last increased fees assessed for the service in June 2006. As a consequence of adding these enhancements, the value of the service has incrementally increased over time and NASDAQ believes that it is appropriate to now raise the fees to better align them with the increased value of the service. In addition, NASDAQ believes that the proposed fees will cover the costs associated with responding to customer requests, configuring NASDAQ's systems,

[3] Securities Exchange Act Release No. 54002 (June 16, 2006), 71 FR 36143 (June 23, 2006) (SR–NASD–2006–072) (increasing each of the fees by $30 per month); *see also* Securities Exchange Act Release No. 54260 (August 1, 2006), 71 FR 45084 (August 8, 2006) (SR–NASDAQ–2006–024).

[4] Since 2006, the Data Package has been updated to include necessary enhancements based on new market structure rules, as well as new fields added to the Equity Trade Journal based on new functionality offered by the FINRA/NASDAQ Trade Reporting Facility. These enhancements, in conjunction with three new compliance reports, have added significant value to the Data Package. In addition, the ''front-end'' of the service has been redesigned to simplify report requests and increase usability.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

programming to user specifications, and administering the service, among other things, and may provide NASDAQ with a profit. NASDAQ also believes that the fees are equitably allocated, since use of the Data Package service is voluntary and the subscription fees will be imposed on all purchasers equally based on the number of users and the level of service subscribed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–173 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–173. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–NASDAQ–2011–173, and should be submitted on or before January 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–94 Filed 1–6–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 979 (Sub-No. 2X)]

Connecticut Southern Railroad, Inc.—Abandonment Exemption—in Hartford County, CT

Connecticut Southern Railroad, Inc. (CSO) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 2.4 miles of rail line extending between milepost 2.0 and milepost 4.4 on its Suffield Subdivision in Hartford County, Conn. The line traverses United States Postal Service Zip Codes 06078 and 06080.

CSO has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 8, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 19, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSO's

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

representative: Melanie B. Yasbin, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSO has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 13, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–(800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSO shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSO's filing of a notice of consummation by January 9, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

By the Board.

Decided: January 4, 2012.

Raina S. White,

Director, Office of Proceedings.

[FR Doc. 2012–133 Filed 1–6–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Council on Jobs and Competitiveness (PCJC)

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Open Meeting.

SUMMARY: The President's Council on Jobs and Competitiveness will meet on January 17, 2012, at the White House, 1600 Pennsylvania Avenue NW., Washington, DC, beginning at 2 p.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.whitehouse.gov/live*.

DATES: The meeting will be held on January 17, 2012 at 2 p.m. Eastern Time.

ADDRESSES: The PCJC will convene its meeting at the White House, 1600 Pennsylvania Avenue NW., Washington, DC. The public is invited to submit written statements to the PCJC by any of the following methods:

Electronic Statements

• Send written statements to the PCJC's electronic mailbox at *PCJC@treasury.gov*; or

Paper Statements

• Send paper statements in triplicate to John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a), and the regulations thereunder, John Oxtoby, Designated Federal Officer of the PCJC, has ordered publication of this notice that the PCJC will convene its next meeting on January 17, 2012 at the White House, 1600 Pennsylvania Avenue NW., Washington, DC, beginning at 2 p.m. Eastern Time. The meeting will be broadcast on the internet via live webcast at *http://www.whitehouse.gov/live*. The purpose of this meeting is to discuss initiatives and policies to strengthen the economy, promote and accelerate job growth and bolster America's competitiveness around the world. The President will continue the discussion focused on identifying practical ways the government and business can work together to foster growth and create jobs. Due to the significant logistical difficulties of convening the members of the PCJC, the meeting has been scheduled with less than 15 days notice (see 41 CFR 102–3.150(b)).

Dated: December 28, 2011.

Rebecca Ewing,

Acting Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2012–131 Filed 1–6–12; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 5 January 9, 2012

Part II

Environmental Protection Agency

40 CFR Parts 51, 60, 61, et al.

Revisions to Test Methods and Testing Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 61, and 63

[EPA–HQ–OAR–2010–0114; FRL–9501–3]

RIN 2060–AQ01

Revisions to Test Methods and Testing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes editorial and technical corrections necessary for source testing of emissions and operations. The revisions include the addition of alternative equipment and methods as well as corrections to technical and typographical errors. We also solicit public comment on potential changes to the current procedures for determining emission stratification.

DATES: Comments must be received on or before March 9, 2012.

Public Hearing. If anyone contacts the EPA by January 19, 2012 requesting to speak at a public hearing, a hearing will be held on February 8, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0114, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Revisions to Test Methods and Testing Regulations, Docket No. EPA–HQ–OAR–2010–0114, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2010–0114, EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. 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 No. EPA–HQ–OAR–2010–0114. 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 *www.regulations.gov* or email. The *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 *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 as well as with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Revisions to Test Methods and Testing Regulations Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. 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 Revisions to Test Methods and Testing Regulations Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Foston Curtis, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–1063; fax number: (919) 541–0516; email address: *curtis.foston@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The proposed amendments apply to a large number of industries that are already subject to the current provisions of Parts 51, 60, 61, and 63. Therefore, we have not listed specific affected industries or their North American Industry Classification System (NAICS) codes here. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

B. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of

this proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control. A redline/strikeout document comparing the proposed revisions to the appropriate sections of the current rules is located in the docket.

D. How is this document organized?

The supplementary information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for the EPA?
C. Where can I get a copy of this document?
D. How is this document organized?
II. Background
III. Summary of Amendments
A. Appendix M of Part 51
B. Method 201A of Appendix M of Part 51
C. Method 202 of Appendix M of Part 51
D. General Provisions (Subpart A) Part 60
E. Industrial-Commercial-Institutional Steam Generating Units (Subpart Db) Part 60
F. Hospital/Medical/Infectious Waste Incinerators (Subpart Ec) Part 60
G. Sulfuric Acid Plants (Subpart H) Part 60
H. Sewage Treatments Plants (Subpart O) Part 60
I. Kraft Pulp Mills (Subpart BB) Part 60
J. Stationary Gas Turbines (Subpart GG) Part 60
K. Lead-Acid Battery Manufacturing Plants (Subpart KK) Part 60
L. Metallic Mineral Processing Plants (Subpart LL) Part 60
M. Asphalt Processing and Asphalt Roofing Manufacture (Subpart UU) Part 60
N. Volatile Organic Chemical (VOC) Emissions From Synthetic Organic Compound Manufacturing Industry (SOCMI) Distillation Operations (Subpart NNN) Part 60
O. Stationary Compression Ignition Internal Combustion Engines (Subpart IIII) Part 60
P. Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) Part 60
Q. Method 1 of Appendix A–1 of Part 60
R. Method 2 of Appendix A–1 of Part 60
S. Method 2A of Appendix A–1 of Part 60
T. Method 2B of Appendix A–1 of Part 60
U. Method 2D of Appendix A–1 of Part 60
V. Method 3A of Appendix A–2 of Part 60
W. Method 4 of Appendix A–3 of Part 60
X. Method 5 of Appendix A–3 of Part 60
Y. Method 5A of Appendix A–3 of Part 60
Z. Method 5E of Appendix A–3 of Part 60
AA. Method 5H of Appendix A–3 of Part 60
BB. Method 6 of Appendix A–4 of Part 60
CC. Method 6C of Appendix A–4 of Part 60
DD. Method 7 of Appendix A–4 of Part 60
EE. Method 7A of Appendix A–4 of Part 60
FF. Method 7E of Appendix A–4 of Part 60
GG. Method 8 of Appendix A–4 of Part 60
HH. Method 10 of Appendix A–4 of Part 60
II. Methods 10A and 10B of Appendix A–4 of Part 60
JJ. Method 11 of Appendix A–5 of Part 60
KK. Method 12 of Appendix A–5 of Part 60
LL. Method 14A of Appendix A–5 of Part 60
MM. Method 16A of Appendix A–6 of Part 60
NN. Method 18 of Appendix A–6 of Part 60
OO. Method 23 of Appendix A–7 of Part 60
PP. Method 24 of Appendix A–7 of Part 60
QQ. Method 25 of Appendix A–7 of Part 60
RR. Method 25C of Appendix A–7 of Part 60
SS. Method 25D of Appendix A–7 of Part 60
TT. Method 26 of Appendix A–8 of Part 60
UU. Method 29 of Appendix A–8 of Part 60
VV. Method 30B of Appendix A–8 of Part 60
WW. Performance Specification 1 of Appendix B of Part 60
XX. Performance Specification 3 of Appendix B of Part 60
YY. Performance Specification 4 of Appendix B of Part 60
ZZ. Performance Specification 4B of Appendix B of Part 60
AAA. Performance Specification 7 of Appendix B of Part 60
BBB. Performance Specification 11 of Appendix B of Part 60
CCC. Performance Specification 15 of Appendix B of Part 60
DDD. Performance Specification 16 of Appendix B of Part 60
EEE. Procedure 1 of Appendix F of Part 60
FFF. Procedure 2 of Appendix F of Part 60
GGG. Procedure 5 of Appendix F of Part 60
HHH. General Provisions (Subpart A) Part 61
III. Beryllium (Subpart C) Part 61
JJJ. Beryllium Rocket Motor Firing (Subpart D) Part 61
KKK. Mercury (Subpart E) Part 61
LLL. Inorganic Arsenic Emissions from Glass Manufacturing Plants (Subpart N) Part 61
MMM. Method 101 of Appendix B of Part 61
NNN. Method 101A of Appendix B of Part 61
OOO. Method 102 of Appendix B of Part 61
PPP. Method 104 of Appendix B of Part 61
QQQ. Methods 108 and 108A of Appendix B of Part 61
RRR. General Provisions (Subpart A) Part 63
SSS. Synthetic Organic Chemical Manufacturing Industry (Subpart G) Part 63
TTT. Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Subpart N) Part 63
UUU. Ethylene Oxide Emissions Standards for Sterilization Facilities (Subpart O) Part 63
VVV. Marine Tank Vessel Loading Operations (Subpart Y) Part 63
WWW. Aerospace Manufacturing and Rework Facilities (Subpart GG) Part 63
XXX. Pharmaceuticals Production (Subpart GGG) Part 63
YYY. Secondary Aluminum Production (Subpart RRR) Part 63
ZZZ. Manufacturing of Nutritional Yeast (Subpart CCCC) Part 63
AAAA. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (Subpart UUUU) Part 63
BBBB. Stationary Reciprocating Internal Combustion Engines (Subpart ZZZZ) Part 63
CCCC. Method 306 of Appendix A of Part 63
DDDD. Method 306A of Appendix A of Part 63
EEEE. Methods 308, 315, and 316 of Appendix A of Part 63
FFFF. Method 321 of Appendix A of Part 63
IV. Request for Comments
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background

The EPA catalogs revisions and updates that are needed for test methods, performance specifications, and associated regulations in 40 CFR parts 51, 60, 61, and 63, and proposes the revisions on a 5- to 10-year basis. The last methods update was published as a final rule on October 17, 2000 (65 FR 61744). Many of these needed revisions were brought to our attention by affected parties and end-users. The revisions consist of allowable alternatives that were not previously available, changes that facilitate the use of mercury-free equipment, and updates needed to correct obsolete provisions or add flexibility. Corrections to typographical errors and technical errors in equations and diagrams are also proposed. It is important to note that although numerous technical

corrections are being proposed to portions of the subparts in parts 51, 60, 61, and 63, changes are not made to any compliance standard, reporting, or recordkeeping requirement. For this notice, the EPA is only proposing revisions to sections of the subpart pertaining to source testing or monitoring of emissions and operations.

III. Summary of Amendments

A. Appendix M of Part 51

In the introduction of Appendix M of part 51, Methods 3A and 19 would be added to the list of methods not requiring the use of audit samples. Method 3A is a direct measurement instrumental method which the audit program does not evaluate, and Method 19 deals with calculation procedures and not measurement procedures.

B. Method 201A of Appendix M of Part 51

Revisions would be made to the Method 201A published on December 21, 2010. Typographical errors in references to isokinetic sampling rate, source gas temperatures, stack blockage dimensions by the sampling heads, and PM_{10} in Sections 8.3.4(b), 8.3.4.1, 8.7.2.2, and 8.7.5.5(a), respectively, would be corrected. An erroneous reference to Methods 4A and 5 in Section 10.1 when using a standard pitot tube would be corrected to refer to Methods 1 and 2. Section 10.5, which addresses Class A volumetric glassware, would be deleted because it is not needed in the method. For those filters whose weight cannot be weighed to a constant weight in Section 11.2.1, instruction would be added to flag and report the data as a minimum value. It would be noted that the nozzle, front half, and in-stack filter samples need to be speciated into organic and inorganic fractions to be similar to the practice in Method 17. The method would also note that neither Method 17 nor 201A require a separate analysis of the filter for inorganic and organic particulate matter. Method 201A is often used together with Method 202 which requires a separate analysis of inorganic and organic PM. This note would remind testers that a separate analysis is not required for Method 201A. An incorrect term in Equation 9 of Section 12.5 would be corrected. In the nomenclature in Section 12.1, V_b, the volume of aliquot taken for ion chromatography (IC) analysis, would be deleted since no IC analysis is performed.

C. Method 202 of Appendix M of Part 51

Revisions would be made to the Method 202 published on December 21, 2010. In Section 8.5.3.1, the text referring to empty impingers would be deleted because empty impingers are not used. Figures 2 and 3 would be revised to correctly show the first impinger with an extended stem instead of a shortened one to be consistent with the method text, and the condensed moisture and sample portion of the sampling train would be labeled to make it easy to identify. Figures 4, 5, and 6 would be republished because they did not print clearly in the December 21, 2010, publication.

D. General Provisions (Subpart A) Part 60

In the General Provisions of part 60, Methods 3A and 19 would be added to the list of methods not requiring the use of audit samples in § 60.8(gd). Method 3A is a direct measurement instrumental method which the audit program does not evaluate, and Method 19 deals with calculation procedures in lieu of measurement procedures.

A new § 60.8(h) would be added to require that sampling sites be evaluated for cyclonic flow and stratification before testing. Cyclonic flow and gas stratification has not been adequately addressed in the past except for particulate measurement methods. Our experience has been that gaseous pollutant measurements may also be affected by these phenomena. Procedures currently used in Methods 1 and 7E would be referenced for all tests to evaluate the suitability of test locations and give procedures for testing under conditions of gas stratification and cyclonic flow to preclude non-representative sampling.

A new § 60.8(i) would be added to allow the use of Method 205 of 40 CFR part 51, Appendix M, ''Verification of Gas Dilution Systems for Field Instrument Calibrations,'' as an alternative provision whenever the use of multiple calibration gases is required under Part 60. Method 205 has previously been allowed for different applications on a case-by-case basis. Method 205 reduces the number of cylinder gases needed for a test by allowing lower-concentration gases to be generated from a high-level gas. Section 60.13(d)(1) would be revised to remove the phrase ''automatically, intrinsic to the opacity monitor'' which was incorrectly inserted into the paragraph in a past revision. The title of an organization in a method that is incorporated by reference would be updated in § 60.17(e), and the edition of the method referred to in § 60.17(e)(1) would be updated to reflect the currently available version.

E. Industrial-Commercial-Institutional Steam Generating Units (Subpart Db) Part 60

In subpart Db, Method 320 would be added as an alternative to the methods for determining nitrogen oxides (NO_X) concentration in § 60.46b(f)(1)(ii), (h)(1) and (2), and sulfur dioxide (SO_2) concentration in § 60.47b(b)(2). The EPA has allowed the use of Method 320 in the past on a case-by-case basis and now believes it is appropriate for general use.

F. Hospital/Medical/Infectious Waste Incinerators (Subpart Ec) Part 60

In subpart Ec, the definition of medical/infectious wastes in § 60.51c would be revised to correct the misspelling of ''cremation.''

G. Sulfuric Acid Plants (Subpart H) Part 60

In Subpart H, an equation for calculating the SO_2 emission rate in § 60.84(d) would be corrected.

H. Sewage Treatment Plants (Subpart O) Part 60

In subpart O, a reference to Method 209F in § 60.154(b)(5) would be revised to reflect a newer available version of the method (*i.e.,* 2540G).

I. Kraft Pulp Mills (Subpart BB) Part 60

In subpart BB, a typographical error in the equation in § 60.284(c)(3) would be corrected.

J. Stationary Gas Turbines (Subpart GG) Part 60

In subpart GG, the definitions of terms for the equation in § 60.335(b)(l) would be revised to allow the reference combustor inlet absolute pressure to be measured in millimeters of mercury (mm Hg). Using the site barometric pressure gives comparable results to the observed combustor inlet absolute pressure for calculating the mean NO_X emission concentration and would be allowed as an alternative.

K. Lead-Acid Battery Manufacturing Plants (Subpart KK) Part 60

In subpart KK, Method 29 would be added as an alternative to Method 12 in § 60.374(b)(1)and (c)(2) for determining the lead concentration and flow rate of the effluent gas. Method 29 is an accepted method for determining lead under other rules and is appropriate for this subpart as well. Also, an error in the equation for calculating the lead emission concentration in 60.374(b)(2) would be corrected.

L. Metallic Mineral Processing Plants (Subpart LL) Part 60

In subpart LL, an error in the value of the particulate matter standard in § 60.382(a)(1) would be corrected from 0.02 g/dscm to 0.05 g/dscm. An alternative procedure, where a single visible emission observer may conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval, would be added to § 60.386. This alternative would allow the observer to take readings in a more cost-effective and timely manner than currently allowed.

M. Asphalt Processing and Asphalt Roofing Manufacture (Subpart UU) Part 60

In subpart UU, an error in the value of the particulate matter standard for saturated felt or smooth-surfaced roll roofing in § 60.472(a)(1)(ii) would be corrected from 0.04 kg/Mg to 0.4 kg/Mg.

N. Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations (Subpart NNN) Part 60

In subpart NNN, several paragraphs were renumbered in a previous amendment, but conforming changes in sections that referenced these paragraphs were not made. In § 60.660(c)(4) and § 60.665(h)(2) and (3), these references would be corrected.

O. Stationary Compression Ignition Internal Combustion Engines (Subpart IIII) Part 60

In Subpart IIII, the use of Method 1 or 1A for sampling point selection would be dropped, and single-point sampling at the centroid of the exhaust would be added. The exhausts of most regulated engines are too small and not equipped with sampling ports. This makes it difficult to divide the exhaust into multiple sampling-point locations as required by Methods 1 and 1A. Table 7 would be revised to delete the requirement to use Method 1 or 1A.

P. Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) Part 60

In Subpart JJJJ, the exhausts of most regulated engines do not contain sampling ports and are too small to be subdivided into multiple sampling-point locations. Table 2 would be revised to delete the requirement to use Method 1 or 1A for determining sampling site and sampling-point location, and instruction would be added to sample at the centroid of the exhaust.

Q. Method 1 of Appendix A–1 of Part 60

In Method 1, Section 11.2.2 would be clarified to note that it specifically applies to gaseous measurements. The provisions in the section for determining exhaust gas stratification would be streamlined to make them consistent with the new stratification provisions in Method 7E. Figures 1–1 and 1–2 would be clarified to note that the horizontal coordinates represent the duct diameters from the sampling point to the flow disturbance and not simply the duct diameters from the flow disturbance. Figure 1–2 would also be corrected to show the proper demarcation between the requirement for 12 and 16 sampling points. The test for the presence or absence of cyclonic flow would be required for all tests instead of recommended at sites suspected of having cyclonic flow.

R. Method 2 of Appendix A–1 of Part 60

In Method 2, a pressure stability specification that has been lacking for the pitot tube leak-check would be added to clearly note the desired stability. An erroneous reference to a Figure 2–6B would be corrected to reference Figure 2–7B. An error in a term in the denominator of Equation 2–7 would be corrected to the average of the square root of delta P rather than the square root of the average delta P. The velocity constant in English units used in Equation 2–7 would be corrected by changing m/sec to ft/sec. The term for absolute temperature in Equations 2–7 and 2–8 would be corrected to represent the average of the absolute temperatures; an inadvertently omitted term would be added to Section 12.1 for the average absolute temperature; and calibrating a barometer against a NIST-traceable barometer would be added as an alternative to calibrating against a mercury barometer to facilitate the use of mercury-free products.

S. Method 2A of Appendix A–1 of Part 60

In Method 2A, calibrating a barometer against a NIST-traceable barometer would be added as an alternative to calibrating against a mercury barometer to facilitate the use of mercury-free products.

T. Method 2B of Appendix A–1 of Part 60

In Method 2B, nomenclature errors would be corrected and the assumed ambient carbon dioxide concentration used in the calculations would be changed from 300 to 380 ppm to closer approximate current ambient levels.

U. Method 2D of Appendix A–1 of Part 60

In Method 2D, calibrating a barometer against a NIST-traceable barometer would be added as an alternative to calibrating against a mercury barometer to facilitate the use of mercury-free products.

V. Method 3A of Appendix A–2 of Part 60

In Method 3A, a redundant sentence noting that pre-cleaned air may be used for the high-level calibration gas would be deleted.

W. Method 4 of Appendix A–3 of Part 60

In Method 4, the English value for the leak rate exceedance in Section 9.1 would be corrected from 0.20 cfm to 0.020 cfm. Method 6A, Method 320, and a calculation using F-factors would be added as alternatives to Method 4 for the moisture determination. These are logical alternatives in cases where Methods 6A and 320 are already being used, and the F-factors approach can save both time and expenses in some cases.

X. Method 5 of Appendix A–3 of Part 60

In Method 5, a clarification would be added that the deionized water used in the analysis of material caught in the impingers must have ≤0.001 percent residue; the factor K would be corrected to K' in Equation 5–13; calibrating a barometer against a NIST-traceable barometer would be added as an alternative to calibrating against a mercury barometer to facilitate the use of mercury-free products; calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer would be added as an alternative to calibrating against a mercury-in-glass thermometer to facilitate the use of mercury-free products; rechecking temperature sensors for the filter holder and metering system after each test has been found to be sufficient and would replace having sensors calibrated within 3 °F; the option to check the probe heater calibration after a test at a single point using a reference thermometer would be added; the use of weather station barometric pressure corrected to testing point elevation would be added as an option to having an on-site barometer; mention of stopcock grease for air-tight impinger seals would be deleted since it is outdated and not often used; a smaller acetone cleanup blank is determined sufficient and a single blank per container would be allowed in place of a blank from each wash bottle; Section 10.3.3 would be clarified as a post-test

metering system calibration check rather than a metering system calibration, and an alternative metering check procedure would be added; the Isostack metering system would be noted as an acceptable system for determining sample flow rates; the use of a Teflon filter holder would be allowed without having to obtain the Administrator's approval first; and Reference 13 for post-test calibration would be added to the method.

Y. Method 5A of Appendix A–3 of Part 60

In Method 5A, mercury-free thermometers would be added as an alternative to mercury-in-glass thermometers to facilitate the use of mercury-free products.

Z. Method 5E of Appendix A–3 of Part 60

In Method 5E, the use of the Rosemount Model 2100A total organic content analyzer would be replaced with the Tekmar-Dohrmann or equivalent analyzer, as neither the Rosemount analyzer nor any similar dual-injection analyzer is currently manufactured. Also, Section 12.5 inadvertently labels the equation for total particulate concentration as Eq. 5E–4, which would be corrected to Eq. 5E–5.

AA. Method 5H of Appendix A–3 of Part 60

In Method 5H, Section 12.1 would be revised to add missing terms C_i, C_o, Q_i, and Q_o; and procedures for the determination of an alternative tracer gas flow rate would be added.

BB. Method 6 of Appendix A–4 of Part 60

In Method 6, calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer would be added as an alternative to using a mercury-in-glass thermometer, and calibrating a barometer against a NIST-traceable barometer would be added as an alternative to calibrating against a mercury barometer. These revisions would facilitate the use of mercury-free products.

CC. Method 6C of Appendix A–4 of Part 60

In Section 4.0 of Method 6C, an incorrect reference to Section 4.1 of Method 6 would be corrected to reference Section 4.0 of Method 7E. Provisions that were removed from the original method that addressed potential quenching effects in fluorescence analyzers would be added again. It was previously believed that current fluorescence analyzers are not affected by quenching effects; however, we were informed that the provisions are still needed in many cases.

DD. Method 7 of Appendix A–4 of Part 60

In Method 7, procedures would be added to avoid biased results when sampling under conditions of high SO_2 concentrations; calibrating a barometer against a NIST-traceable barometer would be added as an alternative to calibrating against a mercury barometer; and calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer would be added as an alternative to using a mercury-in-glass thermometer. These revisions would facilitate the use of mercury-free products.

EE. Method 7A of Appendix A–4 of Part 60

In Method 7A, new procedures would be added to avoid biased results when sampling under conditions of high SO_2 concentrations, and calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer would be added as an alternative to using a mercury-in-glass thermometer to facilitate the use of mercury-free products.

FF. Method 7E of Appendix A–4 of Part 60

In Method 7E, the instructions for choosing the high-level calibration gas would be clarified. Instructions would be added to minimize contact of the sample with any condensate to reduce the chance of sample loss, and an error in the traverse point locations used to determine stratification across large stacks would be corrected. A statement noting that the stratification test is not required at sources with temporally varying emissions or low-concentration emissions would be added since a stratification test under such conditions would be meaningless or difficult to pass. The basis of a stable response for measurements in the system response time determination would be revised in Section 8.2.5 to conform with Section 8.2.6. The response time reading would be recorded after the concentration reading has reached 95 percent or within 0.5 ppm of a stable response for the gas instead of after reaching 95 percent of the certified gas concentration. This change removes a potential conflict between the response time stable reading criterion and the bias or system calibration error test criterion. Alternative sampling bags made of materials other than Tedlar would be allowed if the materials are applicable for retaining the compounds of interest. Tedlar bags are no longer being produced.

GG. Method 8 of Appendix A–4 of Part 60

In Method 8, corrections would be made to errors in the sample aliquot volumes required for containers 1 and 2 and in the values for V_a and V_{soln}. Figure 8–1 would be clarified to identify which impingers collect sulfuric acid/sulfur trioxide and which collect sulfur dioxide.

HH. Method 10 of Appendix A–4 of Part 60

Method 10 would be revised to allow the use of sample tanks as an alternative to flexible bags for sample collection. Tanks are an acceptable collection medium, are currently allowed for carbon monoxide in other EPA methods, and are appropriate for Method 10 as well.

II. Methods 10A and 10B of Appendix A–4 of Part 60

In Methods 10A and 10B, sampling bags made of materials other than Tedlar would be allowed if the materials have the sample retaining qualities of Tedlar. Tedlar bags are no longer produced.

JJ. Method 11 of Appendix A–5 of Part 60

Method 11 would be revised to address sample breakthrough at high concentrations. An additional collection impinger would be added to the train whenever the final impinger solution exhibits a yellow color. Calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer would be added as an alternative to using a mercury-in-glass thermometer to facilitate the use of mercury-free products.

KK. Method 12 of Appendix A–5 of Part 60

Method 12 would be revised to allow an analysis by inductively coupled plasma-atomic emission spectrometry (ICP–AES) or cold vapor atomic fluorescence spectrometry (CVAFS) as alternatives to atomic absorption (AA) analysis. The ICP–AES is currently an approved technique for lead analysis in Method 29, and CVAFS offers comparable sensitivity and precision to AA.

LL. Method 14A of Appendix A–5 of Part 60

In Section 10.1.1 of Method 14A, we inadvertently referenced Figure 5–6.

This reference would be corrected to Figure 5–5.

MM. Method 16A of Appendix A–6 of Part 60

In Method 16A, the applicability section would note that method results may be biased low if used at sources other than kraft pulp mills where stack oxygen levels may be lower.

NN. Method 18 of Appendix A–6 of Part 60

In Method 18, sampling bags made of materials other than Tedlar would be allowed if the materials are applicable for retaining the compounds of interest. Tedlar bags are no longer produced.

OO. Method 23 of Appendix A–7 of Part 60

In Method 23, the requirement in Section 2.2.7 that silica gel be stored in metal containers is unnecessary and would be deleted. Section 4.2.7 would be clarified to note that the used silica gel should be transferred to its original container or other suitable vessel if moisture is being determined. If moisture is not being determined, the spent silica gel may be discarded. Mercury-free thermometers would be added as an alternative to using mercury-in-glass thermometers to facilitate the use of mercury-free products.

PP. Method 24 of Appendix A–7 of Part 60

Method 24 would be revised to cite only ASTM Method D2369 and not the specific sections of the method, since the section numbers may change with periodic updates.

QQ. Method 25 of Appendix A–7 of Part 60

In Method 25, more detailed information would be added to describe the filters used for sample collection.

RR. Method 25C of Appendix A–7 of Part 60

Method 25C would be revised to allow sampling lines made of Teflon. Probes that have closed points and are driven below surface in a single step and withdrawn at a distance to create a gas gap would be allowed as acceptable substitutes to using pilot probes and the auger procedure. An equation for correcting the sample nitrogen concentration for tank dilution would be added as a supplemental calculation option.

SS. Method 25D of Appendix A–7 of Part 60

In Method 25D, errors in cross-references within the method would be corrected.

TT. Method 26 of Appendix A–8 of Part 60

Method 26 would be revised to allow the use of heated Teflon probes in place of glass-lined probes. Conflicting temperature requirements for the sampling system would be clarified. The note to keep the probe and filter temperature at least 20 °C above the source temperature would be removed because the specification is not needed at higher temperature stacks. The location of the thermocouple that monitors the collected gas temperature would be clarified as being in the gas stream, not the filter box. Method 26A would be an acceptable alternative to Method 26 since the methods are fundamentally similar and give comparable results when determining non-particulate hydrogen halides.

UU. Method 29 of Appendix A–8 of Part 60

Method 29 would be revised to allow samples to be analyzed by CVAFS as an alternative to AA analysis since CVAFS is as sensitive and precise as AA.

VV. Method 30B of Appendix A–8 of Part 60

In Method 30B, calibrating a barometer against a NIST-traceable barometer would be added as an alternative to calibrating against a mercury barometer to facilitate the use of mercury-free products.

Table 9–1 and the method text would be revised to amend the quality assurance/quality control criteria for sorbent trap section 2 breakthrough and sample analysis. These revisions would address compliance testing and relative accuracy testing of mercury monitoring systems currently being conducted at much lower emission concentrations.

For compliance/emissions testing, the specification in Table 9–1 for sample analysis would be revised to require analytical results be within the valid calibration range down to a concentration of 0.01 μg/dscm. This will ensure that measurements at the low levels being measured under recent rulemakings are of known, acceptable, and consistent quality. For relative accuracy testing of mercury monitoring systems, the sample analysis specification in Table 9–1 would remain the same, but the breakthrough criteria for second section in the sorbent traps would be revised to provide additional flexibility where mercury concentrations are less than 0.5 μg/dscm.

Finally, Method 30B would be revised to include the most up to date citation for determining the method detection limit or MDL.

WW. Performance Specification 1 of Appendix B of Part 60

In Performance Specification 1, the terms ''full scale'' and ''span'' would be noted as having the same meaning.

XX. Performance Specification 3 of Appendix B of Part 60

In Performance Specification 3, a statement that allows the relative accuracy to be within 20 percent of the reference method would be added to establish the original intent of the rule. This statement was inadvertently deleted in a previous amendment.

YY. Performance Specification 4 of Appendix B of Part 60

Performance Specification 4 would be revised to remove the required use of the interference trap specified in Method 10 when evaluating non-dispersive infrared continuous emission monitoring systems against Method 10. This is an old requirement, and the trap is not needed with modern analyzers.

ZZ. Performance Specification 4B of Appendix B of Part 60

Performance Specification 4B would be clarified to note that Equation 1 in Section 7.1.1 for calculating calibration error only applies to the carbon monoxide monitor and not the oxygen monitor. It would be noted for the oxygen monitor that the calibration error should be expressed as the oxygen concentration difference between the mean monitor and reference value at three levels.

AAA. Performance Specification 7 of Appendix B of Part 60

Performance Specification 7 would be revised to allow Methods 15 and 16 as reference methods in addition to Method 11. Methods 15 and 16 are approved for determining hydrogen sulfide and are appropriate for this application. Methods 15 and 16 are approved EPA reference methods for a number of sources. A pertinent reference would also be added to the references section.

BBB. Performance Specification 11 of Appendix B of Part 60

In Performance Specification 11, errors in the denominators of Equations 11–1 and 11–2 would be corrected.

CCC. Performance Specification 15 of Appendix B of Part 60

In Performance Specification 15, the general references to 40 CFR part 60, Appendix B for the relative accuracy analysis procedure would specifically cite Performance Specification 2 of 40 CFR part 60, Appendix B.

DDD. Performance Specification 16 of Appendix B of Part 60

Performance Specification 16 would be clarified to answer questions that have arisen since its publication. Retesting a predictive emission monitoring system (PEMS) after a sensor is replaced would be explained more clearly. Allowances would be made for relative accuracy testing at three load or production rate levels in cases where the key operating parameter could not be readily altered. Additional instruction would be added for performing the relative accuracy audit (RAA). An error in the RAA acceptance criterion would be corrected, and an alternative acceptance criterion for low concentration measurements would be added. The yearly relative accuracy test audit would clearly note that the statistical tests in Section 8.3 are not required. An incorrect reference to Equation 16–4 in Section 12.4 would be corrected.

EEE. Procedure 1 of Appendix F of Part 60

In Procedure 1, the relevant performance specification would be cited for the RAA calculation instead of using the current Equation 1–1 which is not appropriate for all pollutants.

FFF. Procedure 2 of Appendix F of Part 60

In Procedure 2, Equations 2–2 and 2–3 would be revised to have the full-scale value in the denominator, which is more appropriate than the up-scale check value. The denominator of equation 2–4 would be revised to include the volume of the reference device rather than the full-scale value. These revisions reflect the original intent of the rule.

GGG. Procedure 5 of Appendix F of Part 60

In Procedure 5, the second section listed as Section 6.2.6 would be correctly numbered as Section 6.2.7.

HHH. General Provisions (Subpart A) Part 61

In the General Provisions of part 61, Methods 3A and 19 would be added to the list of methods not requiring the use of audit samples in § 61.13(e). These methods were inadvertently omitted in the original rule.

III. Beryllium (Subpart C) Part 61

In the beryllium National Emission Standards for Hazardous Air Pollutants (NESHAP), Method 29 of part 60 would be added as an alternative to Method 104 in § 61.33(a) for emissions testing since Method 29 is used to determine beryllium under other rules and is appropriate for this subpart as well.

JJJ. Beryllium Rocket Motor Firing (Subpart D) Part 61

In the beryllium rocket motor firing NESHAP, a conversion error in the emission standard in § 61.42(a) would be corrected.

KKK. Mercury (Subpart E) Part 61

In the mercury NESHAP, Method 29 of part 60 would be added as an alternative to Method 101A in § 61.53(d)(2) for emissions testing since Method 29 is used to determine mercury under other rules and is appropriate for this subpart as well.

LLL. Inorganic Arsenic Emissions From Glass Manufacturing Plants (Subpart N) Part 61

In the glass manufacturing plants NESHAP, Method 29 in Appendix A of part 60 would be added as an alternative to Method 108 in § 61.164(d)(2)(i) for determining the arsenic emissions rate and in § 61.164(e)(1)(i) and (e)(2) for determining the arsenic concentration in a gas stream. Method 29 is used to determine arsenic under other rules and is appropriate for this subpart as well.

MMM. Method 101 of Appendix B of Part 61

Method 101 would be revised to allow analysis by ICP–AES or CVAFS as alternatives to AA analysis. These techniques are allowed for determining mercury in other approved methods and are appropriate for Method 101 as well. They were not available when Method 101 was promulgated.

NNN. Method 101A of Appendix B of Part 61

Method 101A would be revised to allow analysis by ICP–AES or CVAFS as alternatives to AA analysis. These techniques are allowed for determining mercury in other approved methods and are appropriate for Method 101A as well. They were not available when Method 101A was promulgated.

OOO. Method 102 of Appendix B of Part 61

In Method 102, mercury-free thermometers would be allowed in place of mercury-in-glass thermometers to facilitate the use of mercury-free products.

PPP. Method 104 of Appendix B of Part 61

Method 104 would be revised to allow analysis by ICP–AES as an alternative to AA analysis. This new technique is acceptable for measuring beryllium and was not available when Method 104 was promulgated. A new alternative procedures section would be added to address ICP–AES.

QQQ. Methods 108 and 108A of Appendix B of Part 61

Methods 108 and 108A would be revised to allow analysis by ICP–AES as an alternative to AA analysis. This new technique is acceptable for measuring arsenic and was not available when Methods 108 and 108A were promulgated. A new alternative procedures section would be added to address ICP–AES.

RRR. General Provisions (Subpart A) Part 63

In the General Provisions of part 63, Methods 3A and 19 would be added to the list of methods not requiring the use of audit samples in § 63.7(c). These were inadvertent omissions of the original rule. In § 63.8(f)(6)(iii), an incorrect reference to a section of Performance Specification 2 would be corrected.

SSS. Synthetic Organic Chemical Manufacturing Industry (Subpart G) Part 63

Subpart G would be revised to allow the use of Method 8260B in the SW–846 Compendium of Methods or Method 316 to determine hazardous air pollutant concentrations in wastewater streams in § 63.144(b)(5)(i). Both methods are appropriate for this application but were not considered during the original rule development.

TTT. Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Subpart N) Part 63

South Coast Air Quality Management District Method 205.1 would be added as a testing option for measuring total chromium. Method 205.1 is appropriate for this application, but its application to this rule was not considered during the original rule development.

UUU. Ethylene Oxide Emissions Standards for Sterilization Facilities (Subpart O) Part 63

The ethylene oxide emissions standards for sterilization facilities NESHAP would be revised to allow

California Air Resources Board (CARB) Method 431 as an alternative to the procedures in § 63.365(b) for determining efficiency at the sterilization chamber vent. Method 431 is appropriate for this application but was not considered during the original rule development. An error in a reference to a section in Performance Specification 8 would also be corrected.

VVV. Marine Tank Vessel Loading Operations (Subpart Y) Part 63

The marine tank vessel loading operations NESHAP would be revised to allow Method 25B as an alternative to Method 25A in § 63.565(d)(5) for determining the average volatile organic compound (VOC) concentration upstream and downstream of recovery devices. Method 25B would be allowed as an alternative to Methods 25 and 25A for determining the percent reduction in VOC in § 63.565(d)(8), and the requirement that Method 25B be validated according to Method 301 in § 63.565(d)(10) would be added. Method 25B would also be added as an alternative to Method 25A in determining the baseline outlet VOC concentration in § 63.565(g). Method 25B uses a different detector than Method 25A but gives comparable results to Method 25A in these applications.

WWW. Aerospace Manufacturing and Rework Facilities (Subpart GG) Part 63

The aerospace manufacturing and rework facilities NESHAP would be revised to remove an incorrect reference to the location of Method 319 in § 63.750(o).

XXX. Pharmaceuticals Production (Subpart GGG) Part 63

The pharmaceuticals production NESHAP would be revised to allow Method 320 as an alternative to Method 18 for demonstrating that a vent is not a process vent. Method 320 is a broadly applicable method that is acceptable in this application because it is self-validating.

YYY. Secondary Aluminum Production (Subpart RRR) Part 63

The secondary aluminum production NESHAP would be revised to allow Method 26 as an alternative to Method 26A in § 63.1511(c)(9) for determining hydrochloric acid (HCl) concentration. Method 26 is the non-isokinetic version of Method 26A and is being allowed in all cases where non-isokinetic sampling for HCl is performed.

ZZZ. Manufacturing of Nutritional Yeast (Subpart CCCC) Part 63

Table 2 in the manufacturing of nutritional yeast NESHAP would be revised to delete the requirements to use Methods 1, 2, 3, and 4 when measuring VOC by Method 25A. Methods 1, 2, 3, and 4 are required for particulate matter sampling and the VOC in this application is normally not particulate in nature.

AAAA. Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (Subpart UUUU) Part 63

Table 4 in the petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units NESHAP would be revised to allow Method 320 as an alternative to Method 18 for determining control device efficiency for organic compounds. Method 320 is a broadly applicable method that is acceptable in this application because it is self-validating.

BBBB. Stationary Reciprocating Internal Combustion Engines (Subpart ZZZZ) Part 63

Table 4 in the stationary reciprocating internal combustion engines NESHAP would be revised to clarify that a heated probe is not necessary when using ASTM D6522 to measure oxygen or carbon dioxide concentrations because condensed moisture is normally not an interferent to these compounds. The requirement to use Method 1 or 1A for sampling site and sampling point location would be deleted because the exhausts are small and have temporally varying emissions. Instruction would be added to sample at the centroid of the stack.

CCCC. Method 306 of Appendix A of Part 63

Method 306 would be revised to remove references to two figures that do not exist and to add clarifying information about the conditions under which ICP is appropriate for sample analysis. Alternative mercury-free thermometers also would be added as alternatives to mercury-in-glass thermometers to facilitate the use of mercury-free products.

DDDD. Method 306A of Appendix A of Part 63

In Method 306A, information would be added to clarify the conditions under which sample filtering is required.

EEEE. Methods 308, 315, and 316 of Appendix A of Part 63

In Methods 308, 315, and 316, calibrating a temperature sensor against a thermometer equivalent to a mercury-in-glass thermometer would be added as an alternative to mercury-in-glass thermometers to facilitate the use of non-mercury products. Alternative mercury-free thermometers would be added as an alternative to using a mercury-in-glass thermometers.

FFFF. Method 321 of Appendix A of Part 63

In Method 321, the term for dilution factor in the calculations would be clarified.

IV. Request for Comments

The agency is reviewing the adequacy of its current test methods in regard to sampling site selection and sampling point requirements. Emission gas flow patterns affect representative testing, and this is not addressed in many EPA test methods. Method 1 contains provisions for sampling point locations, traversing, and determination of cyclonic flow, and Method 7E was revised to contain procedures for determining gaseous stratification in 2006. However, there are no requirements in most methods to follow the Method 1 or 7E procedures.

Method 7E allows stratification to be assessed through either a 3- or 12-point traverse while measuring variations in either a pollutant or diluent concentration. The degree of stratification determines whether a single-point, 3-, or 12-point traverse is used for the test. There are no requirements to check for cyclonic flow in Method 7E.

We have information that suggests deficiencies exist in the 3-point test in a number of cases and that at least a 5-point, dual axis test should be required. A summary of this information has been included in the regulatory docket. We are also reconsidering the appropriateness of a diluent gas for the test instead of the regulated pollutant.

In this proposed rule, we would update the General Provisions of Parts 60, 61, and 63 to include evaluations of gas stratification and cyclonic flow with all compliance tests. The agency solicits your comments and data to aid in establishing better procedures.

V. 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 (EO) 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).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). The amendments being proposed in this action to the test methods and testing regulations do not add information collection requirements but make needed corrections and updates to existing testing methodology.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this 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 neither impose emission measurement requirements beyond those specified in the current regulations, nor will it change any emission standard. This proposed action will not impose any new requirements on small entities. 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 contains no regulatory requirements that might significantly or uniquely affect small governments. This action corrects and updates current testing regulations and does not add any new requirements.

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. This action simply corrects minor errors and makes updates to current source testing methods to maintain their original intent. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the 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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule imposes no requirements on tribal governments. This action simply corrects and updates current testing regulations. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. The EPA proposes to use ASTM D975–076, developed and adopted by the American Society for Testing and Materials (ASTM). This standard may be obtained from ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. ASTM D975–076 has been determined to be at least as stringent as currently required ASTM D396 for defining ''distillate oil.'' ASTM D975–076 is required in some State permits for this purpose and end users have asked that it be allowed as an alternative to D396 under 40 CFR 60.41c.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule corrects and updates current testing regulations and does not cause emission increases from regulated sources.

Revisions to Test Methods and Testing Regulations

List of Subjects in 40 CFR Parts 51, 60, 61, and 63

Environmental protection, Air pollution control, Test methods and procedures, and Performance specifications.

Dated: November 29, 2011.

Lisa P. Jackson,

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 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

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

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Amend Appendix M by revising section 4a. to read as follows:

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

4. * * *

a. The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of Appendix A–3 of Part 60, Methods 6C, 7E, 9, and 10 of Appendix A–4 of Part 60, Methods 18 and 19 of Appendix A–6 of Part 60, Methods 20, 22, and 25A of Appendix A–7 of Part 60, and Methods 303, 318, 320, and 321 of Appendix A of Part 63. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *http://www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request and the compliance authority may grant a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

3. Amend Method 201A of Appendix M as follows:

a. By revising sections 8.3.4(b) and 8.3.4.1.

b. By revising sections 8.7.2.2 and 8.7.5.5(a).

c. By revising the introductory text of section 10.1.

d. By revising section 11.2.1.

e. By revising Equation 9 in section 12.5.

f. By removing section 10.5.

g. By removing the term ''V_b'' and its definition from section 12.1.

Method 201A—Determination of PM_{10} and $PM_{2.5}$ Emissions From Stationary Sources (Constant Sampling Rate Procedure)

* * * * *

8.3.4 * * *

(b) The appropriate nozzle to maintain the required gas sampling rate for the velocity pressure range and isokinetic range. If the isokinetic range cannot be met (*e.g.,* batch processes, extreme process flow or temperature variation), void the sample or use methods subject to the approval of the Administrator to correct the data. The acceptable variation from isokinetic sampling is 80 to 120 percent and no more than 100 ± 21 percent (2 out of 12 or 5 out of 24) sampling points outside of this criteria.

* * * * *

8.3.4.1 Preliminary traverse. You must use an S-type pitot tube with a conventional thermocouple to conduct the traverse. Conduct the preliminary traverse as close as possible to the anticipated testing time on sources that are subject to hour-by-hour gas flow rate variations of approximately ± 20 percent and/or gas temperature variations of approximately ± 10 °C (± 18; °F). (**Note:** You should be aware that these variations can cause errors in the cyclone cut diameters and the isokinetic sampling velocities.)

* * * * *

8.7.2.2 Probe blockage factor. You must use Equation 26 to calculate an average probe blockage correction factor (b_f) if the diameter of your stack or duct is between 25.7 and 36.4 inches for the combined $PM_{2.5}/PM_{10}$ sampling head and pitot and between 18.8 and 26.5 inches for the $PM_{2.5}$ cyclone and pitot. A probe blockage factor is calculated because of the flow blockage caused by the relatively large cross-sectional area of the cyclone sampling head, as discussed in Section 8.3.2.2 and illustrated in Figures 8 and 9 of Section 17. You must determine the cross-sectional area of the cyclone head you use and determine its stack blockage factor. (**Note:** Commercially-available sampling heads (including the PM_{10} cyclone, $PM_{2.5}$ cyclone, pitot and filter holder) have a projected area of approximately 31.2 square inches when oriented into the gas stream. As the probe is moved from the outermost to the innermost point, the amount of blockage that actually occurs ranges from approximately 13 square inches to the full 31.2 inches plus the blockage caused by the probe extension. The average cross-sectional area blocked is 22 square inches.

* * * * *

8.7.5.5 * * *

(a) Container #1, Less than or equal to $PM_{2.5}$ micrometer filterable particulate. Use tweezers and/or clean disposable surgical gloves to remove the filter from the filter holder. Place the filter in the Petri dish that you labeled with the test identification and Container #1. Using a dry brush and/or a sharp-edged blade, carefully transfer any PM and/or filter fibers that adhere to the filter holder gasket or filter support screen to the Petri dish. Seal the container. This container holds particles less than or equal to 2.5 micrometers that are caught on the in-stack

filter. (**Note:** If the test is conducted for PM_{10} only, then Container #1 would be for less than or equal to PM_{10} micrometer filterable particulate.)

* * * * *

10.1 Gas Flow Velocities. You must use an S-type pitot tube that meets the required EPA specifications (EPA Publication 600/4–77–0217b) during these velocity measurements. (**NOTE:** If, as specified in Section 8.7.2.3, testing is performed in stacks less than 26.5 inches in diameter, testers may use a standard pitot tube according to the requirements in Method 1 or 2 of Appendix A–3 to Part 60.) You must also complete the following:

* * * * *

11.2.1 Container #1, Less than or Equal to $PM_{2.5}$ Micrometer Filterable Particulate. Transfer the filter and any loose particulate from the sample container to a tared weighing dish or pan that is inert to solvent or mineral acids. Desiccate for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh to a constant weight and report the results to the nearest 0.1 mg. (See Section 3.0 for a definition of constant weight.) If constant weight requirements cannot be met, data should be reported and flagged as a minimum value. (*Note:* Regardless of the stack temperature, you are not required to speciate the Method 201A nozzle, front half or in-stack filter sample into organic and inorganic fractions. Neither Method 17 nor 201A require separate analysis of the filter for inorganic and organic PM. Since the in-stack filter samples collected at ≤30 °C (85 °F) may include both filterable insoluble particulate and condensable particulate, the filter should be weighed after desiccation but not extracted since insoluble particulate will not be recovered from the extraction.)

* * * * *

12.5 * * *

For N_{re} greater than or equal to 3,162:

$$Q_{IV} = 0.07657 \left[\frac{\mu}{C^{0.6205}}\right] \left[\frac{P_S M_W}{T_s}\right]^{-0.3795} \left[\frac{1}{D_{50}}\right]^{1.241} \qquad \text{(Eq. 9)}$$

* * * * *

4. Amend Method 202 of Appendix M as follows:

a. By revising the introductory text in section 8.5.3.1.

b. By revising section 11.2.2.

c. By revising Figures 2, 3, 4, 5, and 6 in section 18.0.

Method 202—Dry Impinger Method for Determining Condensable Particulate Emissions from Stationary Sources

* * * * *

8.5.3.1 If you choose to conduct a pressurized nitrogen purge on the complete CPM sampling train, you may quantitatively transfer the water collected in the condenser and the water dropout impinger to the backup impinger as an alternative to replacing the short stem impinger insert with a long stem insert prior to purging the sampling train. You must measure the water combined in the backup impinger and record the volume or weight as part of the moisture collected during sampling as specified in Section 8.5.3.4.

* * * * *

11.2.2 CPM Container #1, Aqueous Liquid Impinger Contents. Analyze the water soluble CPM in Container #1 as described in this section. Place the contents of Container #1 into a separatory funnel. Add approximately 30 ml of hexane to the funnel, mix well, and pour off the upper organic phase. Repeat this procedure twice with 30 ml of hexane each time combining the organic phase from each extraction. Each time, leave a small amount of the organic/hexane phase in the separatory funnel, ensuring that no water is collected in the organic phase. This extraction should yield about 90 ml of organic extract. Combine the organic extract from Container #1 with the organic train rinse in Container #2.

* * * * *

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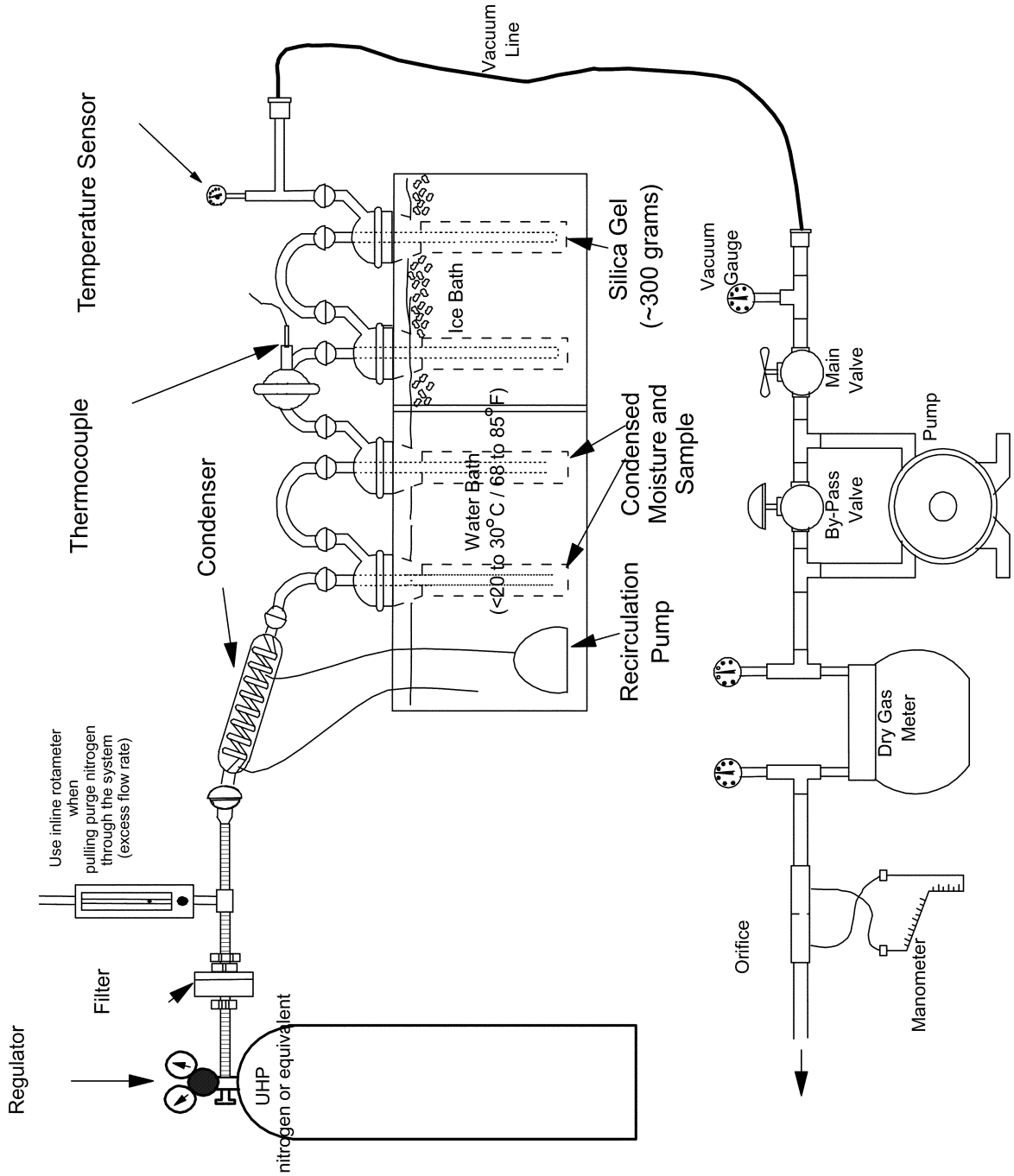

Figure 2. Nitrogen Purge Train Configuration (Vacuum Purge)

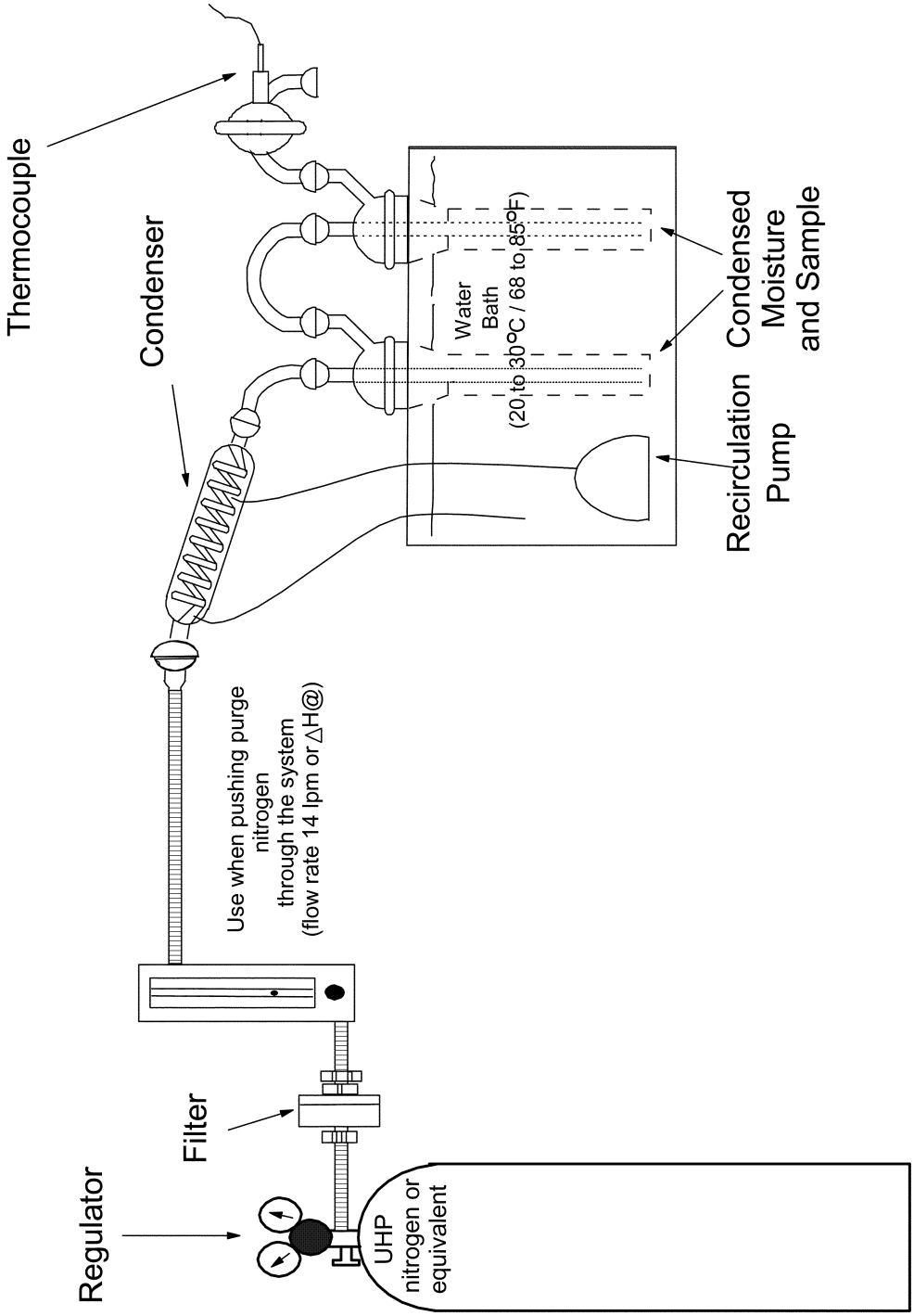

Figure 3. Nitrogen Purge Train Configuration (Pressure Purge)

Field Train Recovery Blank Condensable Particulate Calculations	
Plant	
Date	
Blank No.	
CPM Filter No.	
Water volume added to purge train (V_p)	ml
Field Reagent Blank Mass[a]	
Water (Section 11.2.7)	mg
Acetone (Section 11.2.6)	mg
Hexane (Section 11.2.8)	mg
Field Train Recovery Blank Mass	
Mass of Organic CPM (m_{ob}) (Section 11.2.3)	mg
Mass of Inorganic CPM (m_{ib}) (Equation 3)	mg
Mass of the Field Train Recovery Blank (not to exceed 2.0 mg) (Equation 2)	mg

[a]Field reagent blanks are optional and intended to provide the testing contractor with information they can use to implement corrective actions, if necessary, to reduce the residual mass contribution from reagents used in the field. Field reagent blanks are not used to correct the CPM measurement results.

Figure 4. Field Train Recovery Blank Condensable Particulate Calculations

Other Field Train Sample Condensable Particulate Data	
Plant	
Date	
Run No.	
CPM Filter No.	
Water volume added to purge train (max 50 ml) (V_p)	ml
Date	
Run No.	
CPM Filter No.	
Water volume added to purge train (max 50 ml) (V_p)	ml
Date	
Run No.	
CPM Filter No.	
Water volume added to purge train (max 50 ml) (V_p)	ml

Figure 5. Other Field Train Sample Condensable Particulate Data

Calculations for Recovery of Condensable PM (CPM)		
Plant _____		
Date _____		
Run No. _____		
Sample Preparation - CPM Containers No. 1 and 2 (Section 11.1)		
Was significant volume of water lost during transport? Yes or No	_____	
If Yes, measure the volume received.	_____	
Estimate the volume lost during transport.	_____	ml
Was significant volume of organic rinse lost during transport? Yes or No	_____	
If Yes, measure the volume received.	_____	
Estimate the volume lost during transport.	_____	ml
For Titration		
Normality of NH_4OH (N) (Section 10.2)	_____	N
Volume of titrant (V_t) (Section 11.2.2.2)	_____	ml
Mass of NH_4 added (m_c) (Equation 1)	_____	mg
For CPM Blank Weights		
Inorganic Field Train Recovery Blank Mass (m_{ib}) (Section 9.9)	_____	mg
Organic Field Train Recovery Blank Mass (m_{ob}) (Section 9.9)	_____	mg
Mass of Field Train Recovery Blank (M_{fb}) (max. 2 mg) (Equation 2)	_____	mg
For CPM Train Weights		
Mass of Organic CPM (m_o) (Section 11.2.3)	_____	mg
Mass of Inorganic CPM (m_i) (Equation 3)	_____	mg
Total CPM Mass (m_{cpm}) (Equation 4)	_____	mg

Figure 6. CPM Work Table

* * * * *

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PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

5. The authority citation for part 60 continues to read as follows:

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

6. Amend § 60.8 by revising paragraph (g)(1) and adding new paragraphs (h) and (i) to read as follows:

§ 60.8 Performance tests.

* * * * *

(g) * * *

(1) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of Appendix A–3 of Part 60, Methods 6C, 7E, 9, and 10 of Appendix A–4 of Part 60, Methods 18 and 19 of Appendix A–6 of Part 60, Methods 20, 22, and 25A of Appendix A–7 of Part 60, and Methods 303, 318, 320, and 321 of Appendix A of Part 63. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner,

operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and then report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request, and the compliance authority may grant, a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

(h) Unless otherwise specified in the applicable subpart, each test location must be verified to be free of cyclonic flow and evaluated for the existence of emission gas stratification and the required number of sampling traverse points. If other procedures are not specified in the applicable subpart to the regulations, use the appropriate procedures in Method 1 to check for cyclonic flow and Method 7E to evaluate emission gas stratification and selection of sampling points.

(i) Whenever the use of multiple calibration gases is required by a test method, performance specification, or quality assurance procedure in a Part 60 standard or appendix, Method 205 of 40 CFR part 51, Appendix M, ''Verification of Gas Dilution Systems for Field Instrument Calibrations,'' may be used.

7. Amend § 60.13 by revising paragraph (d)(1) to read as follows:

§ 60.13 Monitoring requirements.

* * * * *

(d)(1) Owners and operators of a CEMS installed in accordance with the provisions of this part, must check the zero (or low level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once daily in accordance with a written procedure. The zero and span must, at a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit of the applicable performance specification in Appendix B of this part. The system must allow the amount of the excess zero and span drift to be recorded and quantified whenever specified. Owners and operators of a COMS installed in accordance with the provisions of this part must check the zero and upscale (span) calibration drifts at least once daily. For a particular COMS, the acceptable range of zero and upscale calibration materials is defined in the applicable version of PS–1 in Appendix B of this part. For a COMS, the optical surfaces, exposed to the effluent gases, must be cleaned before performing the zero and upscale drift adjustments, except for systems using automatic zero adjustments. The optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

* * * * *

8. Amend § 60.17 by revising paragraphs (e) and (e)(1) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(e) The following material is available for purchase from the Water Environment Federation, 2626 Pennsylvania Avenue NW., Washington, DC 20037.

(1) Method 209A, Total Residue Dried at 103–105 °C, in Standard Methods for the Examination of Water and Wastewater, 20th Edition, 1999, IBR approved February 25, 1985, for § 60.683(b).

* * * * *

9. Amend § 60.46b by revising paragraphs (f)(1)(ii) and (h)(1) and (2) to read as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(f) * * *

(1) * * *

(ii) Method 7E of Appendix A of this part or Method 320 of Appendix A of Part 63 shall be used to determine the NO_X concentrations. Method 3A or 3B of Appendix A of this part shall be used to determine O_2 concentration.

* * * * *

(h) * * *

(1) Conduct an initial performance test as required under § 60.8 over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the NO_X emission standards under § 60.44b using Method 7, 7A, or 7E of Appendix A of this part, Method 320 of Appendix A of Part 63, or other approved reference methods; and

(2) Conduct subsequent performance tests once per calendar year or every 400 hours of operation (whichever comes first) to demonstrate compliance with the NO_X emission standards under § 60.44b over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input capacity using Method 7, 7A, or 7E of Appendix A of this part, Method 320 of Appendix A of Part 63, or other approved reference methods.

* * * * *

10. Amend § 60.47b by revising paragraph (b)(2) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide.

* * * * *

(b) * * *

(2) Measuring SO_2 according to Method 6B of Appendix A of this part at the inlet or outlet to the SO_2 control system. An initial stratification test is required to verify the adequacy of the sampling location for Method 6B of Appendix A of this part. The stratification test shall consist of three paired runs of a suitable SO_2 and CO_2 measurement train operated at the candidate location and a second similar train operated according to the procedures in Section 3.2 and the applicable procedures in Section 7 of Performance Specification 2. Method 6B of Appendix A of this part, Method 6A of Appendix A of this part, or a combination of Methods 6 and 3 or 3B of Appendix A of this part or Methods 6C or Method 320 of Appendix A of Part 63 and 3A of Appendix A of this part are suitable measurement techniques. If Method 6B of Appendix A of this part is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B of Appendix A of this part, 24-hour tests, the mean of the absolute

difference between the three paired runs must be less than 10 percent.

* * * * *

11. Amend § 60.51c by revising the definition of ''Medical/infectious waste'' to read as follows:

§ 60.51c Definitions.

* * * * *

Medical/infectious waste means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that are listed in paragraphs (1) through (7) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of this chapter; household waste, as defined in § 261.4(b)(1) of this chapter; ash from incineration of medical/infectious waste, once the incineration process has been completed; human corpses, remains, and anatomical parts that are intended for interment or cremation; and domestic sewage materials identified in § 261.4(a)(1) of this chapter.

* * * * *

12. Amend § 60.84 by revising the equation in paragraph (d) to read as follows:

§ 60.84 Emission monitoring.

* * * * *

(d) * * *

$E_s = (C_s\ S)/[0.265 - (0.0126\ \%O_2) - (A\ \%CO_2)]$

* * * * *

13. Amend § 60.154 by revising paragraph (b)(5) to read as follows:

§ 60.154 Test methods and procedures.

* * * * *

(b) * * *

(5) Samples of the sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends; and ''2540 G. Total, Fixed, and Volatile Solids in Solid and Semisolid Samples, in Standard Methods for the Examination of Water and Wastewater, 20th Edition, 1998'' (incorporated by reference—see § 60.17) shall be used to determine dry sludge content of each sample (total solids residue), except that:

* * * * *

14. Amend § 60.284 by revising the equation in paragraph (c)(3) to read as follows:

§ 60.284 Monitoring of emissions and operations.

* * * * *

(c) * * *

(3) * * *

$C_{corr} = C_{meas} \times (21 - X)/(21 - Y)$

* * * * *

15. Amend § 60.335 by revising two terms for the equation in paragraph (b)(1)to read as follows:

§ 60.335 Test methods and procedures.

* * * * *

(b) * * *

(1) * * *

P_r = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure. Alternatively, you may use 760 mm Hg (29.92 in Hg),

P_o = observed combustor inlet absolute pressure at test, mm Hg. Alternatively, you may use the barometric pressure for the date of the test,

* * * * *

16. Amend 60.374 by revising paragraphs (b)(1), (b)(2), and (c)(2) to read as follows:

§ 60.374 Test methods and procedures.

* * * * *

(b) * * *

(1) Method 12 or Method 29 shall be used to determine the lead concentration (C_{Pb}) and, if applicable, the volumetric flow rate (Q_{sda}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

(2) When different operations in a three-process operation facility are ducted to separate control devices, the lead emission concentration (C) from the facility shall be determined as follows:

$$C = \left[\sum_{a=1}^{n}\left(C_a Q_{sda}\right)\right] / \sum_{a=1}^{n} Q_{sda}$$

Where:

C = Concentration of lead emissions for the entire facility, mg/dscm (gr/dscf).

C_a = Concentration of lead emissions from facility ''a'', mg/dscm (gr/dscf).

Q_{sda} = Volumetric flow rate of effluent gas from facility ''a'', dscm/hr (dscf/hr).

N = Total number of control devices to which separate operations in the facility are ducted.

* * * * *

(c) * * *

(2) Method 12 or Method 29 shall be used to determine the lead concentration (C_{Pb}) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf).

* * * * *

17. Amend § 60.382 by revising paragraph (a)(1) to read as follows:

§ 60.382 Standard for particulate matter.

* * * * *

(a) * * *

(1) Contain particulate matter in excess of 0.05 grams per dry standard cubic meter (0.05 g/dscm).

* * * * *

18. Amend § 60.386 by revising paragraph (b)(2) to read as follows:

§ 60.386 Test methods and procedures.

* * * * *

(b) * * *

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity from stack emissions and process fugitive emissions. The observer shall read opacity only when emissions are clearly identified as emanating solely from the affected facility being observed. A single visible emission observer may conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval. This option is subject to the following limitations:

(i) No more than three emission points are read concurrently;

(ii) All three emission points must be within a 70° viewing sector or angle in front of the observer such that the proper sun position can be maintained for all three points; and

(iii) If an opacity reading for any one of the three emission points is within 5 percent opacity of the application standard, then the observer must stop taking readings for the other two points and continue reading just that single point.

* * * * *

19. Amend § 60.472 by revising paragraph (a)(1)(ii) to read as follows:

§ 60.472 Standards for particulate matter.

* * * * *

(a) * * *

(1) * * *

(ii) 0.4 kg/Mg (0.8 lb/ton) of saturated felt or smooth-surfaced roll roofing produced;

* * * * *

20. Amend § 60.660 by revising paragraph (c)(4) to read as follows:

§ 60.660 Applicability and designation of affected facility.

* * * * *

(c) * * *

(4) Each affected facility that has a total resource effectiveness (TRE) index value greater than 8.0 is exempt from all provisions of this subpart except for §§ 60.662; 60.664 (e), (f), and (g); and 60.665 (h) and (l).

* * * * *

21. Amend § 60.665 by revising paragraphs (h)(2) and (3) to read as follows:

§ 60.665 Reporting and recordkeeping requirements.

* * * * *

(h) * * *

(2) Any recalculation of the TRE index value performed pursuant to § 60.664(g); and

(3) The results of any performance test performed pursuant to the methods and procedures required by § 60.664(e).

* * * * *

22. Amend Subpart IIII by revising Table 7 to read as follows:

TABLE 7 TO SUBPART IIII OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS FOR STATIONARY CI ICE WITH A DISPLACEMENT OF ≥30 LITERS PER CYLINDER

[As stated in § 60.4213, you must comply with the following requirements for performance tests for stationary CI ICE with a displacement of ≥30 liters per cylinder]

Each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary CI internal combustion engine with a displacement of ≥30 liters per cylinder.	a. Reduce NO_X emissions by 90 percent or more.	i. Measure NO_X at the centroid of the exhaust at the inlet and outlet of the control device;	(1) Method 7E of 40 CFR part 60, Appendix A, Method 320 of 40 CFR part 63, Appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(a) NO_X concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
		ii. Measure O_2 at the inlet and outlet of the control device; and,	(2) Method 3, 3A, or 3B of 40 CFR part 60, Appendix A.	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, measure moisture content at the inlet and outlet of the control device.	(3) Method 4 of 40 CFR part 60, Appendix A, Method 320 of 40 CFR part 63, Appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture content must be made at the same time as the measurements for NO_X concentration.
	b. Limit the concentration of NO_X in the stationary CI internal combustion engine exhaust.	i. Measure NO_X at the centroid of the exhaust of the stationary internal combustion engine;	(1) Method 7E of 40 CFR part 60, Appendix A, Method 320 of 40 CFR part 63, Appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(a) If using a control device, the sampling site must be located at the outlet of the control device. NO_X concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location; and,	(2) Method 3, 3A, or 3B of 40 CFR part 60, Appendix A.	(b) Measurements to determine O_2 concentration must be made at the same time as the measurement for NO_X concentration.
		iii. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location.	(3) Method 4 of 40 CFR part 60, Appendix A, Method 320 of 40 CFR part 63, Appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture content must be made at the same time as the measurement for NO_X concentration.
	c. Reduce PM emissions by 60 percent or more.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A.	(a) Sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device;	(2) Method 3, 3A, or 3B of 40 CFR part 60, Appendix A.	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for PM concentration.
		iii. If necessary, measure moisture content at the inlet and outlet of the control device; and	(3) Method 4 of 40 CFR part 60, Appendix A.	(c) Measurements to determine and moisture content must be made at the same time as the measurements for PM concentration.

TABLE 7 TO SUBPART IIII OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS FOR STATIONARY CI ICE WITH A DISPLACEMENT OF ≥30 LITERS PER CYLINDER—Continued

[As stated in § 60.4213, you must comply with the following requirements for performance tests for stationary CI ICE with a displacement of ≥30 liters per cylinder]

Each	Complying with the requirement to	You must	Using	According to the following requirements
		iv. Measure PM at the inlet and outlet of the control device.	(4) Method 5 of 40 CFR part 60, Appendix A.	(d) PM concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
	d. Limit the concentration of PM in the stationary CI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A.	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location; and	(2) Method 3, 3A, or 3B of 40 CFR part 60, Appendix A.	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for PM concentration.
		iii. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location;	(3) Method 4 of 40 CFR part 60, Appendix A.	(c) Measurements to determine moisture content must be made at the same time as the measurements for PM concentration.
		iv. Measure PM at the exhaust of the stationary internal combustion engine.	(4) Method 5 of 40 CFR part 60, Appendix A.	(d) PM concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

23. Amend Subpart JJJJ by revising Table 2 to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Measure NO_X at the centroid of the exhaust of the stationary internal combustion engine;	(1) Method 7E of 40 CFR part 60, Appendix A, Method D6522–00(2005),[a] Method 320 of 40 CFR part 63, Appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(a) If using a control device, the sampling site must be located at the outlet of the control device. Results of this test consist of the average of the three 1-hour or longer runs.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust;	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005).[a]	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. Determine the exhaust flow rate of the stationary internal combustion engine exhaust; and	(3) Method 2 or 19 of 40 CFR part 60.	

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location.	(4) Method 4 of 40 CFR part 60, Appendix A, Method 320 of 40 CFR part 63, Appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.
	b. limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Sample for CO at the centroid of the stack of the stationary internal combustion engine;	(1) Method 10 of 40 CFR part 60, Appendix A, ASTM Method D6522–00(2005),[a] Method 320 of 40 CFR part 63, Appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(a) If using a control device, the sampling site must be located at the outlet of the control device. Results of this test consist of the average of the three 1-hour or longer runs.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005).[a]	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. Determine the exhaust flow rate of the stationary internal combustion engine exhaust; and	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location.	(4) Method 4 of 40 CFR part 60, Appendix A, Method 320 of 40 CFR part 63, Appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
	c. limit the concentration of VOC in the stationary SI internal combustion engine exhaust.	i. Measure VOC at the centroid of the exhaust of the stationary internal combustion engine;	(1) Methods 25A and 18 of 40 CFR part 60, Appendix A, Method 25A with the use of a methane cutter as described in 40 CFR 1065.265, Method 18 or 40 CFR part 60, Appendix A,[c d] Method 320 of 40 CFR part 63, Appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(a) If using a control device, the sampling site must be located at the outlet of the control device. Results of this test consist of the average of the three 1-hour or longer runs.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005).[a]	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. Determine the exhaust flow rate of the stationary internal combustion engine exhaust; and	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location.	(4) Method 4 of 40 CFR part 60, Appendix A, Method 320 of 40 CFR part 63, Appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration.

[a] ASTM D6522–00 is incorporated by reference; see 40 CFR 60.17. Also, you may petition the Administrator for approval to use alternative methods for portable analyzer.

[b] You may use ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, for measuring the O_2 content of the exhaust gas as an alternative to EPA Method 3B.

[c] You may use EPA Method 18 of 40 CFR part 60, appendix A, provided that you conduct an adequate pre-survey test prior to the emissions test, such as the one described in OTM 11 on EPA's Web site (*http://www.epa.gov/ttn/emc/prelim/otm11.pdf*).

[d] You may use ASTM D6420–99 (2004), Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry as an alternative to EPA Method 18 for measuring total nonmethane organic.

24. Amend Method 1 of Appendix A–1 to Part 60 by revising Sections 11.2.2, 11.4.1, and Figures 1–1 and 1–2 to read as follows:

Appendix A–1 to Part 60—Test Methods 1 Through 2F

Method 1—Sample and Velocity Traverses From Stationary Sources

* * * * *

11.2.2 Velocity and Gaseous (Non-Particulate) Traverses. Perform a stratification test to determine the appropriate number of sample traverse points. If testing for multiple pollutants or diluents at the same site, a stratification test using only one pollutant or diluent satisfies this requirement. A stratification test is not required for small stacks that are less than 4 inches in diameter. When the 8- and 2-diameter criterion can be met, the minimum number of traverse points for the stratification test will be 12. Test for stratification using a probe of appropriate length to measure the gas concentration at the required traverse points located according to Table 1–2. Alternatively (if the 8- and 2-diameter criterion is met), you may measure the gas concentration at three points on a line passing through the centroidal area. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Sample for a minimum of twice the system response time at each traverse point. Calculate the individual point and mean concentrations. If the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: (a) ±5.0 percent of the mean concentration; or (b) ±0.5 ppm (whichever is less restrictive), the gas stream is considered unstratified and you may collect samples from a single point that most closely matches the mean. If the 5.0 percent or 0.5 ppm criterion is not met, but the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: (a) ±10.0 percent of the mean; or (b) ±1.0 ppm (whichever is less restrictive), the gas stream is considered to be minimally stratified, and you may take samples from three points. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Alternatively, if a 12-point stratification test was performed and the emissions were shown to be minimally stratified (all points within ±10.0 percent of their mean or within ±1.0 ppm), and if the stack diameter (or equivalent diameter, for a rectangular stack or duct) is greater than 2.4 meters (7.8 ft), then you may use 3-point sampling and locate the three points along the measurement line exhibiting the highest average concentration during the stratification test at 0.4, 1.0 and 2.0 meters from the stack or duct wall. If the gas stream is found to be stratified because the 10.0 percent or 1.0 ppm criterion for a 3-point test is not met, locate 12 traverse points for the test in accordance with Table 1–2.

* * * * *

11.4.1 In most stationary sources, the direction of stack gas flow is essentially parallel to the stack walls. However, cyclonic flow may exist: (1) after such devices as cyclones and inertial demisters following venturi scrubbers, or (2) in stacks having tangential inlets or other duct configurations which tend to induce swirling. Determine the presence or absence of cyclonic flow at each sampling location. The following techniques are acceptable for this determination.

* * * * *

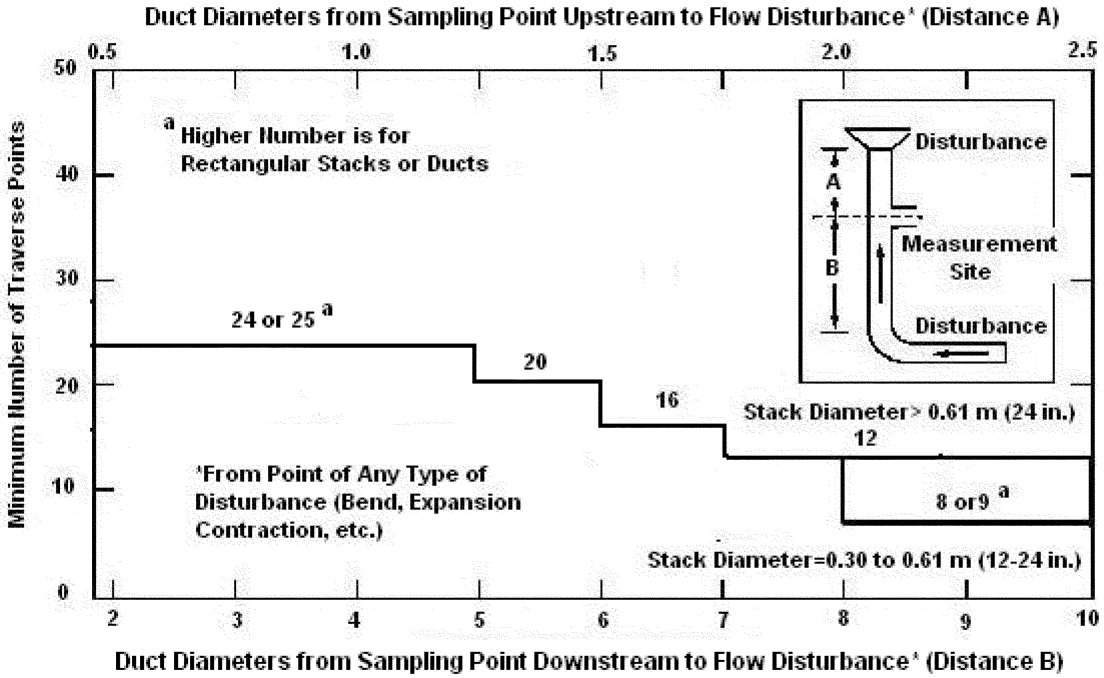

Figure 1-1. Minimum number of traverse points for particulate traverses.

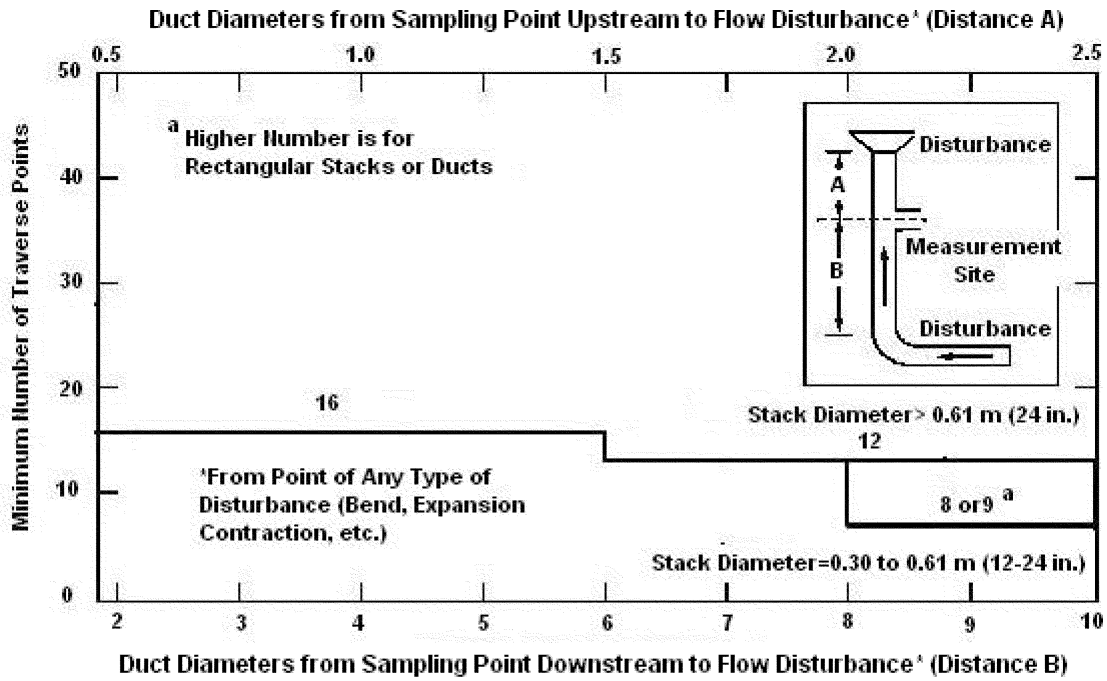

Figure 1-2. Minimum number of traverse points for velocity (nonparticulate) traverses.

* * * * *

25. Amend Method 2 of Appendix A–1 to Part 60 as follows:

a. By revising Section 8.1.

b. By revising the Note at the end of 10.1.1

c. By revising Section 10.4.

d. By adding a term to Section 12.1.

e. By revising Sections 12.6, and 12.7.

Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)

* * * * *

8.1 Set up the apparatus as shown in Figure 2–1. Capillary tubing or surge tanks installed between the manometer and pitot tube may be used to dampen ΔP fluctuations. It is recommended, but not required, that a pretest leak-check be conducted as follows: (1) blow through the pitot impact opening until at least 7.6 cm (3.0 in.) H_2O velocity head registers on the manometer; then, close off the impact opening. The pressure shall remain stable (±2.5 mm H_2O, ±0.10 in. H_2O) for at least 15 seconds; (2) do the same for the static pressure side, except using suction to obtain the minimum of 7.6 cm (3.0 in.) H_2O. Other leak-check procedures, subject to the approval of the Administrator, may be used.

* * * * *

10.1.1 * * *

Note: Do not use a Type S pitot tube assembly that is constructed such that the impact pressure opening plane of the pitot tube is below the entry plane of the nozzle (see Figure 2–7B).

* * * * *

10.4 Barometer. Calibrate the barometer used against a mercury barometer or NIST-traceable barometer prior to each field test.

* * * * *

12.1 Nomenclature

* * *

$T_{s(abavg)}$—Average absolute stack temperature, °K (°R).

* * * * *

12.6 Average Stack Gas Velocity.

$$V_s = K_p\, C_p\, \frac{1}{n}\sum_{i=1}^{n}\sqrt{\Delta p_i}\,\sqrt{\frac{T_{s(Abs)}}{P_s M_s}} \qquad Eq.\ 2-7$$

Where:

$$K_p = 34.97\,\frac{m}{\sec}\left[\frac{(g/g-mole)(mm\ Hg)}{(^oK)(mm\ H_2O)}\right]^{1/2} \qquad Metric$$

$$= 85.49\,\frac{ft}{\sec}\left[\frac{(lb/lb-mole)(in.\ Hg)}{(^oR)(in.\ H_2O)}\right]^{1/2} \qquad English$$

12.7 Average Stack Gas Dry Volumetric Flow Rate.

$$Q = 3600(1 - B_{ws})v_s A \left[\frac{T_{std} P_s}{T_{s(Abs)} P_{std}}\right] \quad Eq. 2-8$$

* * * * *

26. Amend Method 2A of Appendix A–1 to Part 60 by revising Sections 10.3 and 12.2 to read as follows:

Method 2A—Direct Measurement of Gas Volume Through Pipes and Small Ducts

* * * * *

10.3 Barometer. Calibrate the barometer used against a mercury barometer or NIST-traceable barometer prior to the field test.

* * * * *

12.2 Test Meter Calibration Coefficient.

$$Y_m = \frac{(V_{rf} - V_{ri})P_b / T_{r(abs)}}{(V_{mf} - V_{mi})(P_b + P_g) / T_{m(abs)}} \quad Eq. 2A-1$$

* * * * *

27. Amend Method 2B of Appendix A–1 to Part 60 by revising Section 12.1 to read as follows:

Method 2B—Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators

* * * * *

12.1 Nomenclature.

CO_e = Mean carbon monoxide concentration in system exhaust, ppm.

$(CO_2)_a$ = Ambient carbon dioxide concentration, ppm (if not measured during the test period, may be assumed to equal 380 ppm).

$(CO_2)_e$ = Mean carbon dioxide concentration in system exhaust, ppm.

HC_e = Mean organic concentration in system exhaust as defined by the calibration gas, ppm.

Hc_i = Mean organic concentration in system inlet as defined by the calibration gas, ppm.

K_e = Hydrocarbon calibration gas factor for the exhaust hydrocarbon analyzer, unitless [equal to the number of carbon atoms per molecule of the gas used to calibrate the analyzer (2 for ethane, 3 for propane, etc.)].

K_i = Hydrocarbon calibration gas factor for the inlet hydrocarbon analyzer, unitless.

V_{es} = Exhaust gas volume, m^3.

V_{is} = Inlet gas volume, m^3.

Q_{es} = Exhaust gas volume flow rate, m^3/min.

Q_{is} = Inlet gas volume flow rate, m^3/min.

Θ = Sample run time, min.

S = Standard conditions: 20 °C, 760 mm Hg.

* * * * *

28. Amend Method 2D of Appendix A–1 to Part 60 by revising Section 10.4 to read as follows:

Method 2D—Measurement of Gas Volume Flow Rates in Small Pipes and Ducts

* * * * *

10.4 Barometer. Calibrate the barometer used against a mercury barometer or NIST-traceable barometer prior to the field test.

* * * * *

29. Amend Method 3A of Appendix A–2 to Part 60 by revising Section 7.1 to read as follows:

Appendix A–2 to Part 60—Test Methods 2G through 3C

* * * * *

Method 3A—Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

7.1 Calibration Gas. *What calibration gases do I need?* Refer to Section 7.1 of Method 7E for the calibration gas requirements. Example calibration gas mixtures are listed below. Pre-cleaned or scrubbed air may be used for the O_2 high-calibration gas provided it does not contain other gases that interfere with the O_2 measurement.

(a) CO_2 in Nitrogen (N_2).

(b) CO_2 in air.

(c) CO_2/SO_2 gas mixture in N_2.

(d) O_2/SO_2 gas mixture in N_2.

(e) $O_2/CO_2/SO_2$ gas mixture in N_2.

(f) CO_2/NO_X gas mixture in N_2.

(g) $CO_2/SO_2/NO_X$ gas mixture in N_2.

The tests for analyzer calibration error and system bias require high-, mid-, and low-level gases.

* * * * *

30. Amend Method 4 of Appendix A–3 to Part 60 by revising Sections 9.1 and 16 to read as follows:

Appendix A–3 to Part 60—Test Methods 4 Through 5I

* * * * *

Method 4—Determination of Moisture Content in Stack Gases

* * * * *

9.1 Miscellaneous Quality Control Measures.

Section	Quality control measure	Effect
Section 8.1.1.4	Leak rate of the sampling system cannot exceed four percent of the average sampling rate or 0.00057 m^3/min (0.020 cfm).	Ensures the accuracy of the volume of gas sampled. (Reference Method)
Section 8.2.1	Leak rate of the sampling system cannot exceed two percent of the average sampling rate.	Ensures the accuracy of the volume of gas sampled. (Approximation Method)

* * * * *

16.0 Alternative Procedures

16.1 The procedure described in Method 5 for determining moisture content is an acceptable alternative to Method 4.

16.2 The procedures in Method 6A for determining moisture is an acceptable alternative to Method 4.

16.3 Method 320 is an acceptable alternative to Method 4 for determining moisture.

16.4 Using F-factors to determine moisture is an acceptable alternative to Method 4. For a combustion stack not using a scrubber, the moisture content may be calculated as follows:

$$B_{ws} = B_H + B_A + B_F$$

Where:

B_A = Mole fraction of moisture in the ambient air.

$$10^{\left(\left[6.6912\left(-\frac{3144}{T+390.86}\right)\right]\right)}$$

B_F = Mole fraction of moisture from free water in the fuel.

$$B_F = \left[\frac{0.0036\,W^2 + 0.075\,W}{100}\right]\left[\frac{20.9 - O_2}{20.9}\right]$$

B_H = Mole fraction of moisture from the hydrogen in the fuel.

$$B_H = \left(1 - \frac{F_d}{F_w}\right)\frac{(20.9 - O_2)}{20.9}$$

B_{ws} = Mole fraction of moisture in the stack gas.

F_d = Volume of dry combustion components per unit of heat content at 0 percent oxygen, dscf/10^6 Btu (scm/J). See Table 19–2 in Method 19.

F_W = Volume of wet combustion components per unit of heat content at 0 percent oxygen, wet scf/10^6 Btu (scm/J). See Table 19–2 in Method 19.

%RH = Percent relative humidity (calibrated hydrometer acceptable), percent.

P_{Bar} = Barometric pressure, in. Hg (mm Hg).

T = Ambient temperature, °F (°C).

W = Percent free water by weight, percent.

O_2 = Percent oxygen in stack gas, dry basis, percent.

* * * * *

31. Amend Method 5 of Appendix A–3 to Part 60 as follows:

a. By revising Sections 6.1.1.5, 6.1.1.7, and 6.1.1.9.

b. By revising Section 7.1.3.

c. By removing Section 7.1.5.

d. By revising Sections 8.1, 8.3.4, 8.7.3, and 8.7.5.

e. By revising Sections 10.3.3, 10.4, 10.5, and 10.6.

f. By revising Equation 5–13 in Section 16.2.3.3.

g. By adding Section 16.3.

i. By adding reference 13 to Section 17.0.

Method 5—Determination of Particulate Matter Emissions From Stationary Sources

* * * * *

6.1.1.5 Filter Holder. Borosilicate glass, with a glass frit filter support and a silicone rubber gasket. Alternatively, Teflon filter holders may be used. Other materials of construction (*e.g.,* stainless steel or Viton) may be used, subject to the approval of the Administrator. The holder design shall provide a positive seal against leakage from the outside or around the filter. The holder shall be attached immediately at the outlet of the probe (or cyclone, if used).

* * * * *

6.1.1.7 Temperature Sensor. A calibrated temperature sensor (rechecked at at least one point after each test) shall be installed so that the sensing tip of the temperature sensor is in direct contact with the sample gas, and the temperature around the filter holder can be regulated and monitored during sampling.

* * * * *

6.1.1.9 Metering System. Vacuum gauge, leak-free pump, calibrated temperature sensors (rechecked at at least one point after each test), dry gas meter (DGM) capable of measuring volume to within 2 percent, and related equipment, as shown in Figure 5–1. Alternatively, an Isostack metering system may be used if all Method 5 calibrations are performed, with the exception of those related to ΔH@ in Section 9.2.1, wherein the sample flow rate system shall be calibrated in lieu of ΔH@ and shall not deviate by more than 5 percent. Other metering systems capable of maintaining sampling rates within 10 percent of isokinetic and of determining sample volumes to within 2 percent may be used, subject to the approval of the Administrator. When the metering system is used in conjunction with a pitot tube, the system shall allow periodic checks of isokinetic rates.

* * * * *

7.1.3 Water. When analysis of the material caught in the impingers is required, deionized distilled water (to conform to ASTM D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17)) with ≤ 0.001 percent residue shall be used. Run blanks prior to field use to eliminate a high blank on test samples, and use only water with low blank values (≤ 0.001 percent).

* * * * *

8.1 Pretest Preparation. It is suggested that sampling equipment be maintained according to the procedures described in APTD–0576. Alternative mercury-free thermometers may be used if the thermometers are at a minimum equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

8.3.4 Set up the train as shown in Figure 5–1 ensuring that the connections are leak-tight. Subject to the approval of the Administrator, a glass cyclone may be used between the probe and filter holder when the total particulate catch is expected to exceed 100 mg or when water droplets are present in the stack gas.

* * * * *

8.7.3 Before moving the sample train to the cleanup site, remove the probe from the sample train and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Cap the filter inlet where the probe was fastened. Remove the umbilical cord from the last impinger, and cap the impinger. If a flexible line is used between the first impinger or condenser and the filter holder, disconnect the line at the filter holder, and let any condensed water or liquid drain into the impingers or condenser. Cap off the filter holder outlet and impinger inlet. Either ground-glass stoppers, plastic caps, or serum caps may be used to close these openings.

* * * * *

8.7.5 Save a portion of the acetone used for cleanup as a blank. For each container of acetone used for cleanup, save 200 ml and place it in a glass sample container labeled ''acetone blank.'' To minimize any particulate contamination, rinse the wash bottle prior to filling from the tested container. Take 200 ml of this acetone directly from the wash bottle being used, and place it in a glass sample container labeled ''acetone blank.''

* * * * *

10.3.3 Acceptable Variation in Calibration Check. If the DGM coefficient values obtained before and after a test series differ by more than 5 percent, the test series shall either be voided, or calculations for the test series shall be performed using whichever meter coefficient value (*i.e.,* before or after) gives the lower value of total sample volume.

* * * * *

10.4 Probe Heater Calibration. Use a heat source to generate air heated to selected temperatures that approximate those expected to occur in the sources to be sampled. Pass this air through the probe at a typical sample flow rate while measuring the probe inlet and outlet temperatures at various probe heater settings. For each air temperature generated, construct a graph of probe heating system setting versus probe outlet temperature. The procedure outlined in APTD–0576 can also be used. Probes constructed according to APTD–0581 need not be calibrated if the calibration curves in APTD–0576 are used. Also, probes with outlet temperature monitoring capabilities do not require calibration. As an alternative, the following single-point calibration procedure may be used. After each test run series, check the accuracy (and, hence, the calibration) of each thermocouple system at ambient temperature, or any other temperature, within the range specified by the manufacturer, using a reference thermometer (either ASTM reference thermometer or a thermometer that has been calibrated against an ASTM reference thermometer). The temperatures of the thermocouple and reference thermometers shall agree to within ±2 °F. **Note:** The probe heating system shall be calibrated before its initial use in the field.

10.5 Temperature Sensors. Use the procedure in Section 10.3 of Method 2 to calibrate in-stack temperature sensors. Dial thermometers, such as are used for the DGM and condenser outlet, shall be calibrated against mercury-in-glass thermometers. An alternative mercury-free NIST-traceable thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

10.6 Barometer. Calibrate against a mercury barometer or NIST-traceable barometer prior to the field test. Alternatively, barometric pressure may be obtained from a weather report that has been adjusted for the test point (on the stack) elevation.

* * * * *

16.2.3.3 * * *

$$V_{cr(std)} = K' \frac{P_{bar}\theta}{\sqrt{T_{amb}}} \quad \text{Eq. 5-13}$$

* * * * *

16.3 Alternative Post-Test Metering System Calibration. The following procedure may be used as an alternative to the post-test calibration described in Section 10.3.2. This alternative procedure does not detect leakages between the inlet of the metering system and the dry gas meter. Therefore, two steps must be included to make it an equivalent alternative: (1) The metering system must pass the post-test leak-check from either the inlet of the sampling train or the inlet of the metering system. Therefore, if the train fails the former leak-check, another leak-check from the inlet of the metering system must be conducted; (2) The metering system must pass the leak-check of that portion of the train from the pump to the orifice meter as described in Section 10.3.1.1.

16.3.1 After each test run, do the following:

16.3.1.1 Ensure that the metering system has passed the post-test leak-check. If not, conduct a leak-check of the metering system from its inlet.

16.3.1.2 Conduct the leak-check of that portion of the train from the pump to the orifice meter as described in Section 10.3.1.1.

16.3.1.3 Calculate Y_{qa} for each test run using the following equation:

$$Y_{qa} = \frac{\theta}{V_m}\sqrt{\frac{0.0319T_m}{\Delta H@\left(P_{bar} + \frac{\Delta H_{avg}}{13.6}\right)}\left(\frac{29}{M_d}\right)}\left(\sqrt{\Delta H}\right)_{avg} \quad \text{Eq. 5-15}$$

Where:

Y_{qa} = Dry gas meter calibration check value, dimensionless.

0.0319 = (29.92/528)(0.75)^2(in. Hg/°R) cfm^2.

ΔH@ = Orifice meter calibration coefficient, in. H_2O.

M_d = Dry molecular weight of stack gas, lb/lb-mole.

29 = Dry molecular weight of air, lb/lb-mole.

16.3.2 After each test run series, do the following:

16.3.2.1 Average the three or more Y_{qa}'s obtained from the test run series and compare this average Y_{qa} with the dry gas meter calibration factor Y. The average Y_{qa} must be within 5 percent of Y.

16.3.2.2 If the average Y_{qa} does not meet the 5 percent criterion, recalibrate the meter over the full range of orifice settings as detailed in Section 10.3.1. Then follow the procedure in Section 10.3.3.

* * * * *

17.0 References

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13. Shigehara, Roger T., P.G. Royals, and E.W. Steward. ''Alternative Method 5 Post-Test Calibration.'' Entropy Incorporated, Research Triangle Park, NC 27709.

* * * * *

32. Amend Method 5A of Appendix A–3 to Part 60 by revising Section 8.1 to read as follows:

Method 5A—Determination of Particulate Matter Emissions From the Asphalt Processing and Asphalt Roofing Industry

* * * * *

8.1 Pretest Preparation. Unless otherwise specified, maintain and calibrate all components according to the procedure described in APTD–0576, ''Maintenance, Calibration, and Operation of Isokinetic Source-Sampling Equipment'' (Reference 3 in Method 5, Section 17.0). Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

33. Amend Method 5E of Appendix A–3 to Part 60 as follows:

a. By redesignating Sections 16 and 17 as Sections 17 and 18.

b. By adding a new Section 16.

Method 5E—Determination of Particulate Matter Emissions From the Wool Fiberglass Insulation Manufacturing Industry

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16.0 Alternative Procedures

16.1 Total Organic Carbon Analyzer. Tekmar-Dohrmann analyzers using the single injection technique may be used as an alternative to Rosemount Model 2100A analyzers.

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34. Amend Method 5H of Appendix A–3 to Part 60 as follows:

a. By revising Section 12.1.

b. By adding Section 12.15.

c. By redesignating Sections 16 and 17 as Sections 17 and 18, respectively.

d. By adding a new Section 16.

Method 5H—Determination of Particulate Matter Emissions From Wood Heaters From a Stack Location

* * * * *

12.1 Nomenclature.

A = Sample flow rate adjustment factor.

BR = Dry wood burn rate, kg/hr (lb/hr), from Method 28, Section 8.3.

B_{ws} = Water vapor in the gas stream, proportion by volume.

C_i = Tracer gas concentration at inlet, ppmv.

C_o = Tracer gas concentration at outlet, ppmv.

C_s = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (g/dscf).

E = Particulate emission rate, g/hr (lb/hr).

ΔH = Average pressure differential across the orifice meter (see Figure 5H–1), mm H_2O (in. H_2O).

L_a = Maximum acceptable leakage rate for either a post-test leak-check or for a leak-check following a component change; equal to 0.00057 cmm (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.

L_1 = Individual leakage rate observed during the leak-check conducted before a component change, cmm (cfm).

L_p = Leakage rate observed during the post-test leak-check, cmm (cfm).

m_n = Total amount of particulate matter collected, mg.

M_a = Mass of residue of solvent after evaporation, mg.

N_C = Grams of carbon/gram of dry fuel (lb/lb), equal to 0.0425.

N_T = Total dry moles of exhaust gas/kg of dry wood burned, g-moles/kg (lb-moles/lb).

PR = Percent of proportional sampling rate.

P_{bar} = Barometric pressure at the sampling site, mm Hg (in.Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in.Hg).

Q_i = Gas volumetric flow rate at inlet, cfm (l/min).

Q_o = Gas volumetric flow rate at outlet, cfm (l/min).

* * * * *

12.15 Alternative Tracer Gas Flow Rate Determination.

$$Q_o = \frac{Q_i \times C_i}{C_o} \quad Eq.\ 5H-10$$

Note: This gives Q for a single instance only. Repeated multiple determinations are needed to track temporal variations. Very small variations in Q_i, C_i, or C_o may give very large variations in Q_o.

* * * * *

16.0 Alternative Procedures

16.1 Alternative Stack Gas Volumetric Flow Rate Determination (Tracer Gas).

16.1.1 Apparatus.

16.1.1.1 Tracer Gas Injector System. This is to inject a known concentration of tracer gas into the stack. This system consists of a cylinder of tracer gas, a gas cylinder

regulator, a stainless steel needle valve or a flow controller, a nonreactive (stainless steel or glass) rotameter, and an injection loop to disperse the tracer gas evenly in the stack.

16.1.1.2 Tracer Gas Probe. A glass or stainless steel sampling probe.

16.1.1.3 Gas Conditioning System. A gas conditioning is a system suitable for delivering a cleaned sample to the analyzer consisting of a filter to remove particulate and a condenser capable of lowering the dew point of the sample gas to less than 5 °C (40 °F). A desiccant such as anhydrous calcium sulfate may be used to dry the sample gas. Desiccants which react or absorb tracer gas or stack gas may not be used, *e.g.* silica gel absorbs CO_2.

16.1.1.4 Pump. An inert (*i.e.,* stainless steel or Teflon head) pump to deliver more than the total sample required by the manufacturer's specifications for the analyzer used to measure the downstream tracer gas concentration.

16.1.1.5 Gas Analyzer. A gas analyzer is any analyzer capable of measuring the tracer gas concentration in the range necessary at least every 10 minutes. A means of controlling the analyzer flow rate and a device for determining proper sample flow rate shall be provided unless data is provided to show that the analyzer is insensitive to flow variations over the range encountered during the test. The gas analyzer needs to meet or exceed the flowing performance specifications:

Linearity	±1 percent of full scale.
Calibration Error	≤2 percent of span.
Response Time	≤10 seconds.
Zero Drift (24 hour)	≤2 percent of full scale.
Span Drift (24 hour)	≤2 percent of full scale.
Resolution	≤0.5 percent of span.

16.1.1.6 Recorder (optional). To provide a permanent record of the analyzer output.

16.1.2 Reagents.

16.1.2.1 Tracer Gas. The tracer gas is sulfur hexafluoride in an appropriate concentration for accurate analyzer measurement or pure sulfur dioxide. The gas used must be nonreactive with the stack effluent and give minimal (< 3 percent) interference to measurement by the gas analyzer.

16.1.3 Procedure. Select upstream and downstream locations in the stack or duct for introducing the tracer gas and delivering the sampled gas to the analyzer. The inlet location should be 8 or more duct diameters beyond any upstream flow disturbance. The outlet should be 8 or more undisturbed duct diameters from the inlet and 2 or more duct diameters from the duct exit. After installing the apparatus, meter a known concentration of the tracer gas into the stack at the inlet location. Use the gas sample probe and analyzer to show that no stratification of the tracer gas is found in the stack at the measurement locations. Monitor the tracer gas concentration from the outlet location and record the concentration at 10-minute intervals or more often at the option of the tester. A minimum of three measured intervals is recommended to determine the stack gas volumetric flow rate. Other statistical procedures may be applied for complete flow characterization and additional QA/QC.

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35. Amend Method 6 of Appendix A–4 to Part 60 by revising Sections 10.2 and 10.4 to read as follows:

Appendix A–4 to Part 60—Test Methods 6 through 10B

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Method 6—Determination of Sulfur Dioxide Emissions From Stationary Sources

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10.2 Temperature Sensors. Calibrate against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

10.4 Barometer. Calibrate against a mercury barometer or NIST-traceable barometer prior to the field test.

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36. Amend Method 6C of Appendix A–4 to Part 60 by revising Sections 4.0 and 8.3 to read as follows:

Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

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4.0 Interferences

Refer to Section 4.0 of Method 7E.

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8.3 *Interference Check.* You must follow the procedures of Section 8.2.7 of Method 7E to conduct an interference check, substituting SO_2 for NO_X as the method pollutant. For dilution-type measurement systems, you must use the alternative interference check procedure in Section 16 and a co-located, unmodified Method 6 sampling train. Quenching in fluorescence analyzers must be evaluated and remedied unless a dilution system and ambient-level analyzer is used. This may be done by preparing the calibration gas to contain within 1 percent of the absolute oxygen and carbon dioxide content of the measured gas, preparing the calibration gas in air and using vendor nomographs, or by other acceptable means.

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37. Amend Method 7 of Appendix A–4 to Part 60 by revising Sections 4.0, 10.2, and 10.3 to read as follows:

Method 7—Determination of Nitrogen Oxide Emissions From Stationary Sources

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4.0 Interferences

Biased results have been observed when sampling under conditions of high sulfur dioxide concentrations. At or above 2100 ppm SO_2, use five times the H_2O_2 concentration of the Method 7 absorbing solution. Laboratory tests have shown that high concentrations of SO_2 (about 2100 ppm) cause low results in Method 7 and 7A. Increasing the H_2O_2 concentration to five times the original concentration eliminates this bias. However, when no SO_2 is present, increasing the concentration by five times results in a low bias.

* * * * *

10.2 Barometer. Calibrate against a mercury barometer or NIST-traceable barometer prior to the field test.

10.3 Temperature Gauge. Calibrate dial thermometers against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

38. Amend Method 7A of Appendix A–4 to Part 60 by revising Sections 4.0 and 10.4 to read as follows:

Method 7A—Determination of Nitrogen Oxide Emissions From Stationary Sources (Ion Chromatographic Method)

* * * * *

4.0 Interferences

Biased results have been observed when sampling under conditions of high sulfur dioxide concentrations. At or above 2100 ppm SO_2, use five times the H_2O_2 concentration of the Method 7 absorbing solution. Laboratory tests have shown that high concentrations of SO_2 (about 2100 ppm) cause low results in Method 7 and 7A. Increasing the H_2O_2 concentration to five times the original concentration eliminates this bias. However, when no SO_2 is present, increasing the concentration by five times results in a low bias.

* * * * *

10.4 Temperature Gauge. Calibrate dial thermometers against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

39. Amend Method 7E of Appendix A–4 to Part 60 as follows:

a. By revising Section 6.1.

b. By revising Section 7.1.1.

c. By revising Sections 8.1.2 and 8.2.5.

d. By revising Section 16.2.2.

Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

6.1 What do I need for the measurement system? You may use any equipment and supplies meeting the following specifications:

(1) Sampling system components that are not evaluated in the system bias or system calibration error test must be glass, Teflon, or stainless steel. Other materials are potentially acceptable, subject to approval by the Administrator.

(2) The interference, calibration error, and system bias criteria must be met.

(3) Sample flow rate must be maintained within 10 percent of the flow rate at which the system response time was measured.

(4) All system components (excluding sample conditioning components, if used) must maintain the sample temperature above the moisture dew point. Ensure minimal contact between any condensate and the sample gas. Section 6.2 provides example equipment specifications for a NO_X measurement system. Figure 7E–1 is a diagram of an example dry-basis measurement system that is likely to meet the method requirements and is provided as guidance. For wet-basis systems, you may use alternative equipment and supplies as needed (some of which are described in Section 6.2), provided that the measurement system meets the applicable performance specifications of this method.

* * * * *

7.1.1 High-Level Gas. This concentration is chosen to set the calibration span as defined in Section 3.4. Choose this high-level concentration so that emission measurements will be within 20 to 100 percent of this concentration.

* * * * *

8.1.2 Determination of Stratification. Perform a stratification test at each test site to determine the appropriate number of sample traverse points. If testing for multiple pollutants or diluents at the same site, a stratification test using only one pollutant or diluent satisfies this requirement. A stratification test is not required for small stacks that are less than 4 inches in diameter. To test for stratification, use a probe of appropriate length to measure the NO_X (or pollutant of interest) concentration at 12 traverse points located according to Table 1–1 or Table 1–2 of Method 1. Alternatively, you may measure at three points on a line passing through the centroidal area. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Sample for a minimum of twice the system response time (see Section 8.2.6) at each traverse point. Calculate the individual point and mean NO_X concentrations. If the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: (a) ±5.0 percent of the mean concentration; or (b) ±0.5 ppm (whichever is less restrictive), the gas stream is considered unstratified and you may collect samples from a single point that most closely matches the mean. If the 5.0 percent or 0.5 ppm criterion is not met, but the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: (a) ±10.0 percent of the mean; or (b) ±1.0 ppm (whichever is less restrictive), the gas stream is considered to be minimally stratified, and you may take samples from three points. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Alternatively, if a 12-point stratification test was performed and the emissions shown to be minimally stratified (all points within ±10.0 percent of their mean or within ±1.0 ppm), and if the stack diameter (or equivalent diameter for a rectangular stack or duct) is greater than 2.4 meters (7.8 ft), then you may use 3-point sampling and locate the three points along the measurement line exhibiting the highest average concentration during the stratification test at 0.4, 1.2, and 2.0 meters from the stack or duct wall. If the gas stream is found to be stratified because the 10.0 percent or 1.0 ppm criterion for a 3-point test is not met, locate 12 traverse points for the test in accordance with Table 1–1 or Table 1–2 of Method 1. This stratification test may not be meaningful at sources with temporally varying emissions or where emission concentrations are low. In these cases, the stratification test is not required.

* * * * *

8.2.5 Initial System Bias and System Calibration Error Checks. Before sampling begins, determine whether the high-level or mid-level calibration gas best approximates the emissions and use it as the upscale gas. Introduce the upscale gas at the probe upstream of all sample conditioning components in system calibration mode. Record the time it takes for the measured concentration to increase to a value that is within 95 percent or 0.5 ppm (whichever is less restrictive) of a stable response for both the low-level and upscale gases. Continue to observe the gas concentration reading until it has reached a final, stable value. Record this value on a form similar to Table 7E–2.

* * * * *

16.2.2 Bag Procedure. Perform the analyzer calibration error test to document the calibration (both NO and NO_X modes, as applicable). Fill a Tedlar or equivalent bag approximately half full with either ambient air, pure oxygen, or an oxygen standard gas with at least 19.5 percent by volume oxygen content. Fill the remainder of the bag with mid- to high-level NO in N_2 (or other appropriate concentration) calibration gas. (Note that the concentration of the NO standard should be sufficiently high enough for the diluted concentration to be easily and accurately measured on the scale used. The size of the bag should be large enough to accommodate the procedure and time required. Contact the bag manufacturer for guidance on the applicability of Tedlar equivalent materials for NO.)

* * * * *

40. Amend Method 8 of Appendix A–4 to Part 60 as follows:

a. By revising Sections 11.2.1 and 11.2.2.

b. By revising two definitions in Section 12.1.

c. By revising Figure 8–1.

Method 8—Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions From Stationary Sources

* * * * *

11.2.1 Container No. 1. Shake the container holding the isopropanol solution and the filter. If the filter breaks up, allow the fragments to settle for a few minutes before removing a sample aliquot. For determination of SO_3/H_2SO_4 concentration, pipette a 10-ml aliquot of this solution into a 250-ml Erlenmeyer flask, add 2 to 4 drops of thorin indicator, and titrate to a pink endpoint using 0.0100 N barium standard solution. Repeat the titration with a second aliquot of sample, and average the titration values. Replicate titrations must agree within 1 percent or 0.2 ml, whichever is greater.

11.2.2 Container No. 2. Thoroughly mix the solution in the container holding the contents of the second and third impingers. For determination of SO_2 concentration, pipette a 100-ml aliquot of sample into a 250-ml Erlenmeyer flask. Add 40 ml of isopropanol, 2 to 4 drops of thorin indicator, and titrate to a pink endpoint using 0.0100 N barium standard solution. Repeat the titration with a second aliquot of sample, and average the titration values. Replicate titrations must agree within 1 percent or 0.2 ml, whichever is greater.

* * * * *

12.1 * * *

V_a = Volume of sample aliquot titrated, 10 ml for H_2SO_4 and 100 ml for SO_2.

V_{soln} = Total volume of solution in which the sample is contained, 1000 ml for the SO_2 sample and 250 ml for the H_2SO_4 sample.

* * * * *

* * * * *

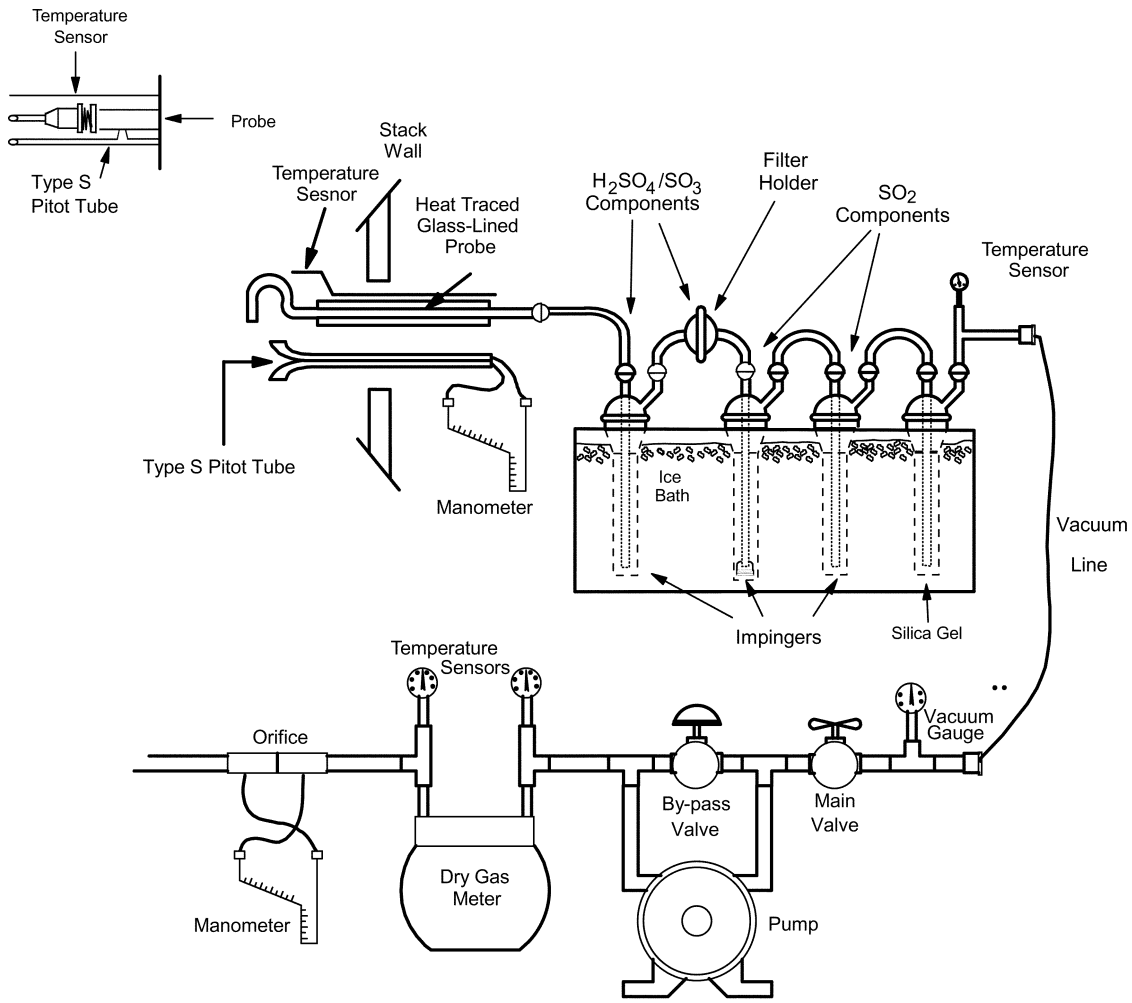

Figure 8-1. Sulfuric Acid Sampling Train.

* * * * *

41. Amend Method 10 of Appendix A–4 to Part 60 by revising Sections 6.2.5 and 8.4.2 to read as follows:

Method 10—Determination of Carbon Monoxide Emissions From Stationary Sources

* * * * *

6.2.5 Flexible Bag. Tedlar, or equivalent, with a capacity of 60 to 90 liters (2 to 3 ft^3). (Contact the bag manufacturer for guidance on the applicability of Tedlar equivalent materials for the compound of interest.) Leak-test the bag in the laboratory before using by evacuating with a pump followed by a dry gas meter. When the evacuation is complete, there should be no flow through the meter. Gas tanks may be used in place of bags if the samples are analyzed within one week.

* * * * *

8.4.2 Integrated Sampling. Evacuate the flexible bag. Set up the equipment as shown in Figure 10–1 with the bag disconnected. Place the probe in the stack and purge the sampling line. Connect the bag, making sure that all connections are leak-free. Sample at a rate proportional to the stack velocity. If needed, the CO_2 content of the gas may be determined by using the Method 3 integrated sample procedures, or by weighing an ascarite CO_2 removal tube used and computing CO_2 concentration from the gas volume sampled and the weight gain of the tube. Data may be recorded on a form similar to Table 10–1. If a tank is used for sample collection, follow procedures similar to those in Sections 8.1.2, 8.2.3, 8.3, and 12.4 of Method 25 as appropriate to prepare the tank, conduct the sampling, and correct the measured sample concentration.

* * * * *

42. Amend Method 10A of Appendix A–4 to Part 60 as follows:

a. By revising Section 2.0.

b. By revising Sections 8.2.1 and 8.2.3.

c. By revising Sections 11.1 and 11.2.

d. By revising the narrative in Section 12.3.

e. By revising Section 13.5.

Method 10A—Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

* * * * *

2.0 Summary of Method

An integrated gas sample is extracted from the stack, passed through an alkaline permanganate solution to remove sulfur oxides and nitrogen oxides, and collected in a Tedlar or equivalent bag. (Contact the bag manufacturer for guidance on the applicability of Tedlar equivalent materials for the compound of interest.) The CO concentration in the sample is measured spectrophotometrically using the reaction of CO with *p*-sulfaminobenzoic acid.

* * * * *

8.2.1 Evacuate the bag completely using a vacuum pump. Assemble the apparatus as shown in Figure 10A–1. Loosely pack glass wool in the tip of the probe. Place 400 ml of alkaline permanganate solution in the first two impingers and 250 ml in the third. Connect the pump to the third impinger, and follow this with the surge tank, rate meter, and 3-way valve. Do not connect the bag to the system at this time.

* * * * *

8.2.3 Purge the system with sample gas by inserting the probe into the stack and drawing the sample gas through the system at 300 ml/min ±10 percent for 5 minutes. Connect the evacuated bag to the system,

record the starting time, and sample at a rate of 300 ml/min for 30 minutes, or until the bag is nearly full. Record the sampling time, the barometric pressure, and the ambient temperature. Purge the system as described above immediately before each sample.

* * * * *

11.1 Assemble the system shown in Figure 10A–3, and record the information required in Table 10A–1 as it is obtained. Pipet 10.0 ml of the colorimetric reagent into each gas reaction bulb, and attach the bulbs to the system. Open the stopcocks to the reaction bulbs, but leave the valve to the bag closed. Turn on the pump, fully open the coarse-adjust flow valve, and slowly open the fine-adjust valve until the pressure is reduced to at least 40 mm Hg. Now close the coarse adjust valve, and observe the manometer to be certain that the system is leak-free. Wait a minimum of 2 minutes. If the pressure has increased less than 1 mm Hg, proceed as described below. If a leak is present, find and correct it before proceeding further.

11.2 Record the vacuum pressure (P_v) to the nearest 1 mm Hg, and close the reaction bulb stopcocks. Open the bag valve, and allow the system to come to atmospheric pressure. Close the bag valve, open the pump coarse adjust valve, and evacuate the system again. Repeat this fill/evacuation procedure at least twice to flush the manifold completely. Close the pump coarse adjust valve, open the bag valve, and let the system fill to atmospheric pressure. Open the stopcocks to the reaction bulbs, and let the entire system come to atmospheric pressure. Close the bulb stopcocks, remove the bulbs, record the room temperature and barometric pressure (P_{bar}, to nearest mm Hg), and place the bulbs on the shaker table with their main axis either parallel to or perpendicular to the plane of the table top. Purge the bulb-filling system with ambient air for several minutes between samples. Shake the samples for exactly 2 hours.

* * * * *

12.3 CO Concentration in the Bag. Calculate C_b using Equations 10A–2 and 10A–3. If condensate is visible in the bag, calculate B_w using Table 10A–2 and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate B_w using the temperature and barometric pressure at the sampling site. * * *

* * * * *

13.5 Stability. The individual components of the colorimetric reagent are stable for at least one month. The colorimetric reagent must be used within two days after preparation to avoid excessive blank correction. The samples in the bag should be stable for at least one week if the bags are leak-free.

* * * * *

43. Amend Method 10B of Appendix A–4 to Part 60 by revising Sections 2.1 and 6.2.3, and by revising the narrative in Section 12.2 to read as follows:

Method 10B—Determination of Carbon Monoxide Emissions From Stationary Sources

* * * * *

2.1 An integrated gas sample is extracted from the sampling point, passed through a conditioning system to remove interferences, and collected in a Tedlar or equivalent bag. (Contact the bag manufacturer for guidance on the applicability of Tedlar equivalent materials for the compound of interest.) The CO is separated from the sample by gas chromatography (GC) and catalytically reduced to methane (CH_4) which is determined by flame ionization detection (FID). The analytical portion of this method is identical to applicable sections in Method 25 detailing CO measurement.

* * * * *

6.2.3 Sample Injection System. Same as in Method 25, Section 6.3.1.4, equipped to accept a sample line from the bag.

* * * * *

12.2 CO Concentration in the Bag. Calculate C_b using Equations 10B–1 and 10B–2. If condensate is visible in the bag, calculate B_w using Table 10A–2 of Method 10A and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate B_w using the temperature and barometric pressure at the sampling site. * * *

* * * * *

44. Amend Method 11 of Appendix A–5 to Part 60 by revising Sections 8.5 and 10.1.2 to read as follows:

Appendix A–5 to Part 60—Test Methods 11 Through 15A

* * * * *

Method 11—Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries

* * * * *

8.5 Sample for at least 10 minutes. At the end of the sampling time, close the sampling valve, and record the final volume and temperature readings. Conduct a leak-check as described in Section 8.2. A yellow color in the final cadmium sulfate impinger indicates depletion of the absorbing solution. An additional cadmium sulfate impinger should be added for subsequent samples and the sample with yellow color in the final impinger should be voided.

* * * * *

10.1.2 Temperature Sensors. Calibrate against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is at a minimum equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

45. Amend Method 12 of Appendix A–5 to Part 60 by revising Section 16.1 and adding Sections 16.4, 16.4.1, and 16.4.2 to read as follows:

Method 12—Determination of Inorganic Lead Emissions From Stationary Sources

* * * * *

16.1 Simultaneous Determination of Particulate Matter and Lead Emissions. Method 12 may be used to simultaneously determine Pb provided: (1) acetone is used to remove particulate from the probe and inside of the filter holder as specified by Method 5, (2) 0.1 N HNO_3 is used in the impingers, (3) a glass fiber filter with a low Pb background is used, and (4) the entire train contents, including the impingers, are treated and analyzed for Pb as described in Sections 8.0 and 11.0 of this method.

* * * * *

16.4 Alternative Analyzer. Inductively coupled plasma-atomic emission spectrometry (ICP–AES) may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.4.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.4.2 The limit of quantitation for the ICP–AES must be demonstrated, and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

* * * * *

46. Amend Method 14A of Appendix A–5 to Part 60 by adding a sentence to the end of Section 10.1.1 to read as follows:

Method 14A — Determination of Total Fluoride Emissions From Selected Sources at Primary Aluminum Production Facilities

* * * * *

10.1.1 Metering system. * * * Allowable tolerances for Y and ΔH@ are given in Figure 5–5 of Method 5 of this appendix.

* * * * *

47. Amend Method 16A of Appendix A–6 to Part 60 by revising Section 1.2 to read as follows:

Appendix A–6 to Part 60—Test Methods 16 Through 18

* * * * *

Method 16A—Determination of Total Reduced Sulfur Emissions From Stationary Sources (Impinger Technique)

* * * * *

1.2 Applicability. This method is applicable for the determination of TRS emissions from recovery boilers, lime kilns, and smelt dissolving tanks at kraft pulp mills, reduced sulfur compounds (H2S, carbonyl sulfide, and carbon disulfide) from sulfur recovery units at onshore natural gas processing facilities, and from other sources when specified in an applicable subpart of the regulations. The flue gas must contain at least 1 percent oxygen for complete oxidation

of all TRS to SO_2. *Note:* If sources other than kraft pulp mills experience low oxygen levels in the emissions, the method results may be biased low.

* * * * *

48. Amend Method 18 of Appendix A–6 to Part 60 as follows:

a. By revising Sections 8.2.1.1.2, 8.2.1.4, 8.2.1.4.2.

b. By adding 8.2.1.5.2.2.

c. By revising Sections 16.1.1.12, and 16.1.3.2.

d. By revising the titles to Figures 18–3 and 18–10.

Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography

* * * * *

8.2.1.1.2 Sampling Procedure. To obtain a sample, assemble the sample train as shown in Figure 18–9. Leak-check both the bag and the container. Connect the vacuum line from the needle valve to the Teflon sample line from the probe. Place the end of the probe at the centroid of the stack or at a point no closer to the walls than 1 m, and start the pump. Set the flow rate so that the final volume of the sample is approximately 80 percent of the bag capacity. After allowing sufficient time to purge the line several times, connect the vacuum line to the bag, and evacuate until the rotameter indicates no flow. Then position the sample and vacuum lines for sampling, and begin the actual sampling, keeping the rate proportional to the stack velocity. As a precaution, direct the gas exiting the rotameter away from sampling personnel. At the end of the sample period, shut off the pump, disconnect the sample line from the bag, and disconnect the vacuum line from the bag container. Record the source temperature, barometric pressure, ambient temperature, sampling flow rate, and initial and final sampling time on the data sheet shown in Figure 18–10. Protect the bag and its container from sunlight. Record the time lapsed between sample collection and analysis, and then conduct the recovery procedure in Section 8.4.2.

* * * * *

8.2.1.4 Other Modified Bag Sampling Procedures. In the event that condensation is observed in the bag while collecting the sample and a direct interface system cannot be used, heat the bag during collection and maintain it at a suitably elevated temperature during all subsequent operations. (*Note:* Take care to leak-check the system prior to the dilutions so as not to create a potentially explosive atmosphere.) As an alternative, collect the sample gas, and simultaneously dilute it in the bag.

* * * * *

8.2.1.4.2 Second Alternative Procedure. Prefill the bag with a known quantity of inert gas. Meter the inert gas into the bag according to the procedure for the preparation of gas concentration standards of volatile liquid materials (Section 10.1.2.2), but eliminate the midget impinger section. Take the partly filled bag to the source, and meter the source gas into the bag through heated sampling lines and a heated flowmeter, or Teflon positive displacement pump. Verify the dilution factors before sampling each bag through dilution and analysis of gases of known concentration.

* * * * *

8.2.1.5.2.2 Analyze the two field audit samples as described in Section 9.2 by connecting each bag containing an audit gas mixture to the sampling valve. Calculate the results; record and report the data to the audit supervisor.

* * * * *

16.1.1.12 Flexible Bags. Tedlar or equivalent, 10- and 50-liter capacity, for preparation of standards. (Contact the bag manufacturer for guidance on the applicability of Tedlar equivalent materials for the compound of interest.)

* * * * *

16.1.3.2 Flexible Bag Procedure. Any leak-free plastic (*e.g.,* Tedlar, Mylar, Teflon) or plastic-coated aluminum (*e.g.,* aluminized Mylar) bag, or equivalent, can be used to obtain the pre-survey sample. Use new bags, and leak-check them before field use. In addition, check the bag before use for contamination by filling it with nitrogen or air and analyzing the gas by GC at high sensitivity. Experience indicates that it is desirable to allow the inert gas to remain in the bag about 24 hours or longer to check for desorption of organics from the bag. Follow the leak-check and sample collection procedures given in Section 8.2.1.

* * * * *

Figure 18–3. Preparation of Standards in Tedlar or Tedlar-Equlivalent Bags and Calibration Curve

* * * * *

Figure 18–10. Field Sample Data Sheet—Tedlar or Tedlar-Equivalent Bag Collection Method

* * * * *

49. Amend Method 23 of Appendix A–7 to Part 60 by revising Sections 2.2.7, 4.1.1.3, and 4.2.7 to read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 23—Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans From Stationary Sources

* * * * *

2.2.7 Storage Container. Air-tight container to store silica gel.

* * * * *

4.1.1.3 Sample Train. It is suggested that all components be maintained according to the procedure described in APTD–0576. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

4.2.7 Silica Gel. Note the color of the indicating silica gel to determine if it has been completely spent and make a mention of its condition. Transfer the silica gel from the fifth impinger to its original container and seal. If a moisture determination is made, follow the applicable procedures in sections 8.7.6.3 and 11.2.3 of Method 5 to handle and weigh the silica gel. If moisture is not measured, the silica gel may be disposed.

* * * * *

50. Amend Method 24 of Appendix A–7 to Part 60 by revising Section 11.2.2 to read as follows:

Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings

* * * * *

11.2.2 Volatile Content. To determine total volatile content, use the apparatus and reagents described in ASTM D2369 (incorporated by reference; see § 60.17 for the approved versions of the standard), respectively, and use the following procedures:

* * * * *

51. Amend Method 25 of Appendix A–7 to Part 60 by revising Section 7.1.3 to read as follows:

Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon

* * * * *

7.1.3 Filters. Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (< 0.05 percent penetration) on 0.3 micron dioctyl phthalate smoke particles. The filter efficiency test shall be conducted in accordance with ASTM Method D2986–71, 78, or 95a (incorporated by reference—see § 60.17). Test data from the supplier's quality control program are sufficient for this purpose.

* * * * *

52. Amend Method 25C of Appendix A–7 to Part 60 as follows:

a. By revising Sections 6.1.

b. By adding a new Section 8.2.3.

c. By revising Section 12.1.

d. By redesignating Equation 25C–2 in Section 12.3 as Equation 25C–3.

c. By redesignating Section 12.3 as Section 12.4.

d. By adding new Section 12.3.

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in MSW Landfill Gases

* * * * *

6.1 Sample Probe. Stainless steel, with the bottom third perforated. Teflon probe liners and sampling lines are also allowed. Non-perforated probes are allowed as long as they are withdrawn to create a gap equivalent to having the bottom third perforated. The sample probe must be capped at the bottom and must have a threaded cap with a sampling attachment at the top. The sample probe must be long enough to go through and extend no less than 0.9 m (3 ft) below the landfill cover. If the sample probe is to be driven into the landfill, the bottom cap should be designed to facilitate driving the probe into the landfill.

* * * * *

8.2.3 Driven Probes. Closed-point probes may be driven directly into the landfill in a single step. This method may not require backfilling if the probe is adequately sealed by its insertion. Unperforated probes that are inserted in this manner and withdrawn a distance from a detachable tip to create an open space are also acceptable.

* * * * *

12.1 Nomenclature.

B_w = Moisture content in the sample, fraction.

C_{N2} = Measured N_2 concentration (by Method 3C), fraction.

C_{N2Corr} = Measured N_2 concentration corrected for dilution, fraction.

C_t = Calculated NMOC concentration, ppmv C equivalent.

C_{tm} = Measured NMOC concentration, ppmv C equivalent.

P_b = Barometric pressure, mm Hg.

P_t = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.

P_{tf} = Final gas sample tank pressure after pressurizing, mm Hg absolute.

P_{ti} = Gas sample tank pressure after evacuation, mm Hg absolute.

P_w = Vapor pressure of H_2O (from Table 25C–1), mm Hg.

r = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 * * * r).

T_t = Sample tank temperature at completion of sampling, °K.

T_{ti} = Sample tank temperature before sampling, °K.

T_{tf} = Sample tank temperature after pressurizing, °K.

* * * * *

12.3 Measured N_2 Concentration Correction. Use the following equation to correct the measured concentration of N_2 as determined by Method 3C for dilution.

$$C_{N_2Corr} = \frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}}\left(C_{N_2}\right) \quad Eq.25C-2$$

* * * * *

53. Amend Method 25D of Appendix A–7 to Part 60 by revising the first sentence in Section 9.1 to read as follows:

Method 25D—Determination of the Volatile Organic Concentration of Waste Samples

* * * * *

9.1 Quality Control Samples. If audit samples are not available, prepare and analyze the two types of quality control samples (QCS) listed in Sections 9.1.1 and 9.1.2. * * *

* * * * *

54. Amend Method 26 of Appendix A–8 as follows:

a. By revising Sections 6.1.1 and 8.1.2.

b. By redesignating Sections 16 and 17 as Sections 17 and 18, respectively.

c. By adding a new Section 16.

Appendix A–8 to Part 60—Test Methods 26 Through 30B

* * * * *

Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Non-Isokinetic Method

* * * * *

6.1.1 Probe. Borosilicate glass, approximately ⅜-in. (9-mm) I.D. with a heating system capable of maintaining a probe gas temperature during sampling of 120 ± 14 °C (248 ± 25 °F) to prevent moisture condensation; or Teflon where stack probes are below 210 °C. If HF is a target analyte, then preconditioning of new teflon components by heating should be considered to prevent potential HF outgassing. A Teflon-glass filter in a mat configuration should be installed in the gas stream, not the filter box, to remove particulate matter from the gas stream (see Section 6.1.6).

* * * * *

8.1.2 Adjust the probe temperature and the temperature of the filter and the stopcock (*i.e.,* the heated area in Figure 26–1) to a temperature sufficient to prevent water condensation. This temperature should be greater than 120 °C (248 °F). The temperature should be monitored throughout a sampling run to ensure that the desired temperature is maintained. It is important to maintain a temperature around the probe and filter of greater than 120 °C (248 °F) since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and, hence, any collection of acid gases on these components would result in potential underreporting of these emissions. The applicable subparts may specify alternative higher temperatures.)

* * * * *

16.0 Alternative Procedures

Method 26A. Method 26A, which uses isokinetic sampling equipment, is an acceptable alternative to Method 26.

* * * * *

55. Amend Method 29 of Appendix A–8 as follows:

a. By redesignating Sections 16 and 17 as Sections 17 and 18, respectively.

b. By adding a new Section 16.

Method 29—Determination of Metals Emissions From Stationary Sources

* * * * *

16.0 Alternative Procedures

16.1 Alternative Analyzer. Samples may also be analyzed by cold vapor atomic fluorescence spectrometry.

* * * * *

56. Amend Method 30B of Appendix A–8 to Part 60 as follows:

a. By revising the first paragraph in Section 8.2.2.1.

b. By revising Table 9–1 in Section 9.

c. By revising Section 10.3.

d. By revising the first paragraph in Section 11.3.

Method 30B—Determination of Total Vapor Phase Mercury Emissions From Coal-Fired Combustion Sources Using Carbon Sorbent Traps

* * * * *

8.2.2.1 Determination of Minimum Calibration Concentration or Mass. Based on your instrument's sensitivity and linearity, determine the calibration concentrations or masses that make up a representative low level calibration range. Verify that you are able to meet the multipoint calibration performance criteria in section 11.0 of this method. Select a calibration concentration or mass that is no less than 2 times the lowest concentration or mass in your calibration curve. The lowest point in your calibration curve must be at least 5, and preferably 10, times the Method Detection Limit (MDL), which is the minimum amount of the analyte that can be detected and reported. The MDL must be determined at least once for the analytical system using an MDL study such as that found in section 15.0 of the EPA Method 301 (76 FR 28673, 5/18/2011). * * *

* * * * *

9.0 Quality Assurance and Quality Control

* * * * *

TABLE 9–1—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR METHOD 30B

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Gas flow meter calibration (At 3 settings or points).	Calibration factor (Y_i) at each flow rate must be within ±2% of the average value (Y).	Prior to initial use and when post-test check is not within ±5% of Y.	Recalibrate at 3 points until the acceptance criteria are met.
Gas flow meter post-test calibration check (Single-point).	Calibration factor (Y_i) must be within ±5% of the Y value from the most recent 3-point calibration.	After each field test. For mass flow meters, must be done on-site, using stack gas.	Recalibrate gas flow meter at 3 points to determine a new value of Y. For mass flow meters, must be done on-site, using stack gas. Apply the new Y value to the field test data.
Temperature sensor calibration	Absolute temperature measures by sensor within ±1.5% of a reference sensor.	Prior to initial use and before each test thereafter.	Recalibrate; sensor may not be used until specification is met.
Barometer calibration	Absolute pressure measured by instrument within ±10 mm Hg of reading with a mercury barometer or NIST traceable barometer.	Prior to initial use and before each test thereafter.	Recalibrate; instrument may not be used until specification is met.
Pre-test leak check	≤4% of target sampling rate	Prior to sampling	Sampling shall not commence until the leak check is passed.
Post-test leak check	≤4% of average sampling rate	After sampling	Sample invalidated.*
Analytical matrix interference test (wet chemical analysis, only).	Establish minimum dilution (if any) needed to eliminate sorbent matrix interferences.	Prior to analyzing any field samples; repeat for each type of sorbent used.	Field sample results not validated.
Analytical bias test	Average recovery between 90% and 110% for Hg^0 and $HgCl_2$ at each of the 2 spike concentration levels.	Prior to analyzing field samples and prior to use of new sorbent media.	Field samples shall not be analyzed until the percent recovery criteria has been met.
Multipoint analyzer calibration	Each analyzer reading within ±10% of true value *and* $r^2 \geq 0.99$.	On the day of analysis, before analyzing any samples.	Recalibrate until successful.
Analysis of independent calibration standard.	Within ±10% of true value	Following daily calibration, prior to analyzing field samples.	Recalibrate and repeat independent standard analysis until successful.
Analysis of continuing calibration verification standard (CCVS).	Within ±10% of true value	Following daily calibration, after analyzing ≤10 field samples, and at end of each set of analyses.	Recalibrate and repeat independent standard analysis, reanalyze samples until successful, if possible; for destructive techniques, samples invalidated.
Test run total sample volume	Within ±20% of total volume sampled during field recovery test.	Each individual sample	Sample invalidated.
Sorbent trap section 2 breakthrough.	For compliance/emissions testing: ≤10% of section 1 Hg mass for Hg concentrations >1 μg/dscm; ≤20% of section 1 Hg mass for Hg concentrations ≤1 μg/dscm For relative accuracy testing: ≤10% of section 1 Hg mass for Hg concentrations >1 μg/dscm; ≤20% of section 1 Hg mass for Hg concentrations ≤1 μg/dscm and >0.5 μg/dscm; ≤50% of section 1 Hg mass for Hg concentrations ≤0.5 μg/dscm >0.1 μg/dscm; No criterion for Hg concentrations ≤0.1 μg/dscm (must meet all other QA/QC specifications).	Every sample	Sample invalidated.*
Paired sorbent trap agreement	≤10% Relative Deviation (RD) mass for Hg concentrations >1 μg/dscm; ≤20% RD or ≤0.2 μg/dscm absolute difference for Hg concentrations ≤1 μg/dscm.	Every run	Run invalidated.*
Sample analysis	Within valid calibration range (within calibration curve).	All Section 1 samples where stack Hg concentration is ≥0.5 μg/dscm.	Reanalyze at more concentrated level if possible, samples invalidated if not within calibrated range.
Sample analysis	Within bounds of Hg^0 and $HgCl_2$ Analytical Bias Test.	All Section 1 samples where stack Hg concentration is ≥0.5 μg/dscm.	Expand bounds of Hg^0 and $HgCl_2$ Analytical Bias Test; if not successful, samples invalidated.

TABLE 9–1—QUALITY ASSURANCE/QUALITY CONTROL CRITERIA FOR METHOD 30B—Continued

QA/QC test or specification	Acceptance criteria	Frequency	Consequences if not met
Field recovery test	Average recovery between 85% and 115% for Hg^0.	Once per field test	Field sample runs not validated without successful field recovery test.

* And data from the pair of sorbent traps are also invalidated.

* * * * *

10.3 Thermocouples and Other Temperature Sensors. Use the procedures and criteria in Section 10.3 of Method 2 in Appendix A–1 to this part to calibrate in-stack temperature sensors and thermocouples. Dial thermometers shall be calibrated against mercury-in-glass thermometers or equivalent. * * *

* * * * *

11.3 Field Sample Analyses. Analyze the sorbent trap samples following the same procedures that were used for conducting the Hg^0 and $HgCl_2$ analytical bias tests. The individual sections of the sorbent trap and their respective components must be analyzed separately (*i.e.,* section 1 and its components, then section 2 and its components). All sorbent trap section 1 sample analyses must be within the calibrated range of the analytical system as specified in Table 9–1. For wet analyses, the sample can simply be diluted to fall within the calibrated range. However, for the destructive thermal analyses, samples that are not within the calibrated range cannot be re-analyzed. As a result, the sample cannot be validated, and another sample must be collected. It is strongly suggested that the analytical system be calibrated over multiple ranges so that thermally analyzed samples do fall within the calibrated range. The total mass of Hg measured in each sorbent trap section 1 must also fall within the lower and upper mass limits established during the initial Hg^0 and $HgCl_2$ analytical bias test. If a sample is analyzed and found to fall outside of these limits, it is acceptable for an additional Hg^0 and $HgCl_2$ analytical bias test to be performed that now includes this level. However, some samples (*e.g.,* the mass collected in trap section 2), may have Hg levels so low that it may not be possible to quantify them in the analytical system's calibrated range. Because a reliable estimate of these low-level Hg measurements is necessary to fully validate the emissions data, the MDL (see section 8.2.2.1 of this method) is used to establish the minimum amount that can be detected and reported. If the measured mass or concentration is below the lowest point in the calibration curve and above the MDL, the analyst must do the following: Estimate the mass or concentration of the sample based on the analytical instrument response relative to an additional calibration standard at a concentration or mass between the MDL and the lowest point in the calibration curve. This is accomplished by establishing a response factor (*e.g.,* area counts per Hg mass or concentration) and estimating the amount of Hg present in the sample based on the analytical response and this response factor.

* * *

* * * * *

57. Amend Performance Specification 1 of Appendix B to Part 60 by revising Section 3.5 to read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 1—Specifications and Test Procedures for Continuous Opacity Monitoring Systems in Stationary Sources

* * * * *

3.5 *Full Scale.* The maximum data display output of the COMS. For purposes of recordkeeping and reporting, full scale will be greater than 80 percent opacity.

Note: ''Full scale'' means ''span.''

* * * * *

58. Amend Performance Specification 3 of Appendix B to Part 60 by revising Section 13.2 to read as follows:

Performance Specification 3—Specifications and Test Procedures for O_2 and CO_2 Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

13.2 CEMS Relative Accuracy Performance Specification. The RA of the CEMS must be no greater than 20 percent of the mean value of the RM test data or 1.0 percent O_2 or CO_2, whichever is greater.

* * * * *

59. Amend Performance Specification 4 of Appendix B to Part 60 by revising Section 8.2 to read as follows:

Performance Specification 4—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10, 10A, 10B, or other approved alternative are the RM for this PS.

* * * * *

60. Amend Performance Specification 4B of Appendix B to Part 60 by revising Section 7.1.1 to read as follows:

Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources

* * * * *

7.1.1 *Calculations.* Summarize the results on a data sheet. Average the differences between the instrument response and the certified cylinder gas value for each gas. Calculate the CE results for the CO monitor according to:

$$CE = |d/FS| \times 100 \quad (1)$$

Where d is the mean difference between the CEMS response and the known reference concentration, and FS is the span value. The CE for the O_2 monitor is the average percent O_2 difference between the O_2 monitor and the certified cylinder gas value for each gas.

* * * * *

61. Amend Performance Specification 7 of Appendix B to Part 60 by revising Section 8.4 and adding a reference to the end of Section 16.0. to read as follows:

Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.4 Relative Accuracy Test Procedure.

8.4.1 Sampling Strategy for RM Tests, Number of RM Tests, Correlation of RM and CEMS Data, and Calculations. These are the same as that in PS–2, Sections 8.4.3 (except as specified below), 8.4.4, 8.4.5, and 8.4.6, respectively.

8.4.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Methods 11, 15, and 16 may be used for the RM for this PS.

8.4.2.1 Sampling Time Per Run—Method 11. A sampling run, when Method 11 (integrated sampling) is used, shall consist of a single measurement for at least 10 minutes and 0.010 dscm (0.35 dscf). Each sample shall be taken at approximately 30-minute intervals.

8.4.2.2 Sampling Time Per Run—Methods 15 and 16. The sampling run shall consist of two injections equally spaced over a 30-minute period following the procedures described in the particular method.

Note: Caution! Heater or non-approved electrical probes should not be used around explosive or flammable sources.

* * * * *

16.0 References

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5. Letter to RAMCON Environmental Corp. from Robert Kellam, December 27, 1992.

* * * * *

62. Amend Performance Specification 11 of Appendix B to Part 60 by revising Sections 12.1(1) and (2) to read as follows:

Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

12.1 * * *

(1) Calculate the upscale drift (UD) using Equation 11–1:

$$UD = \frac{|R_{CEM} - R_U|}{FS} \times 100 \qquad \text{(Eq. 11-1)}$$

Where:

UD = The upscale (high-level) drift of your PM CEMS in percent,

R_{CEM}= The measured PM CEMS response to the upscale reference standard, and

R_U= The pre-established numerical value of the upscale reference standard.

FS = Full-scale value.

(2) Calculate the zero drift (ZD) using Equation 11–2:

$$ZD = \frac{|R_{CEM} - R_L|}{FS} \times 100 \qquad \text{(Eq. 11-2)}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS in percent,

R_{CEM}= The measured PM CEMS response to the zero reference standard,

R_L = The pre-established numerical value of the zero reference standard, and

FS = Full-scale value.

* * * * *

63. Amend Performance Specification 15 of Appendix B to Part 60 by revising Sections 11.1.1.4.2 and 11.1.1.4.3 to read as follows:

Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

11.1.1.4.2 RMs Using a Grab Sampling Technique. Synchronize the RM and FTIR CEM measurements as closely as possible. For a grab sampling RM, record the volume collected and the exact sampling period for each sample. Synchronize the FTIR CEM so that the FTIR measures a spectrum of a similar cell volume at the same time as the RM grab sample was collected. Measure at least five independent samples with both the FTIR CEM and the RM for each of the minimum nine runs. Compare the run concentration averages by using the relative accuracy analysis procedure in Performance Specification 2 of Appendix B of 40 CFR part 60.

11.1.1.4.3 Continuous Emission Monitors as RMs. If the RM is a CEM, synchronize the sampling flow rates of the RM and the FTIR CEM. Each run is at least 1 hour long and consists of at least 10 FTIR CEM measurements and the corresponding 10 RM measurements (or averages). For the statistical comparison, use the relative accuracy analysis procedure in Performance Specification 2 of Appendix B of 40 CFR part 60. If the RM time constant is < ½ the FTIR CEM time constant, brief fluctuations in analyte concentrations that are not adequately measured with the slower FTIR CEM time constant can be excluded from the run average along with the corresponding RM measurements. However, the FTIR CEM run average must still include at least 10 measurements over a 1-hour period.

* * * * *

64. Amend Performance Specification 16 of Appendix B to Part 60 by revising Sections 6.1.7, 8.2.1, 9.1, 9.3, 9.4, 12.4, and 13.5 to read as follows:

Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources

* * * * *

6.1.7 Sensor Location and Repair. We recommend you install sensors in an accessible location in order to perform repairs and replacements. Permanently-installed platforms or ladders may not be needed. If you install sensors in an area that is not accessible, you may be required to shut down the emissions unit to repair or replace a sensor. Conduct a new RATA after replacing a sensor that supplies a critical PEMS parameter if the new sensor provides a different output or scaling or changes the historical training dataset of the PEMS. Replacement of a non-critical sensor that does not cause an impact in the accuracy of the PEMS does not trigger a RATA. All sensors must be calibrated as often as needed but at least as often as recommended by the manufacturers.

* * * * *

8.2.1 Reference Methods. Unless otherwise specified in the applicable regulations, you must use the test methods in Appendix A of this part for the RM test. Conduct the RM tests at three operating levels. The RM tests shall be performed at a low-load (or production) level between the minimum safe, stable load and 50 percent of the maximum level load, at the mid-load level (an intermediary level between the low and high levels), and at a high-load level between 80 percent and the maximum load. Alternatively, if practicable, you may test at three levels of the key operating parameter (*e.g.* selected based on a covariance analysis between each parameter and the PEMS output) equally spaced within the normal range of the parameter.

* * * * *

9.1 QA/QC Summary. Conduct the applicable ongoing tests listed below.

ONGOING QUALITY ASSURANCE TESTS

Test	PEMS regulatory purpose	Acceptability	Frequency
Sensor Evaluation	All		Daily.
RAA	Compliance	3-test avg ≤10% of simultaneous analyzer or RM average.	Each quarter except quarter when RATA performed.
RATA	All	Same as for RA in Sec. 13.1	Yearly in quarter when RAA not performed.
Bias Correction	All	If $d_{avg} \leq \lvert cc \rvert$	Bias test passed (no correction factor needed).
PEMS Training	All	If $F_{critical} \geq Fr \geq 0.8$	Optional after initial and subsequent RATAs.

ONGOING QUALITY ASSURANCE TESTS—Continued

Test	PEMS regulatory purpose	Acceptability	Frequency
Sensor Evaluation Alert Test (optional).	All	See Section 6.1.8	After each PEMS training.

* * * * *

9.3 Quarterly Relative Accuracy Audits. In the first year of operation after the initial certification, perform a RAA consisting of at least three 30-minute portable analyzer or RM determinations each quarter a RATA is not performed. To conduct a RAA, follow the procedures in Section 8.2 for the relative accuracy test, except that only three sets of measurement data are required, and the statistical tests are not required. The average of the three or more portable analyzer or RM determinations must not exceed the limits given in Section 13.5. Report the data from all sets of measurement data. If a PEMS passes all quarterly RAAs in the first year and also passes the subsequent yearly RATA in the second year, you may elect to perform a single mid-year RAA in the second year in place of the quarterly RAAs. This option may be repeated, but only until the PEMS fails either a mid-year RAA or a yearly RATA. When such a failure occurs, you must resume quarterly RAAs in the quarter following the failure and continue conducting quarterly RAAs until the PEMS successfully passes both a year of quarterly RAAs and a subsequent RATA.

9.4 Yearly Relative Accuracy Test. Perform a minimum 9-run RATA at the normal operating level on a yearly basis in the quarter that the RAA is not performed. The statistical tests in Section 8.3 are not required for the yearly RATA.

* * * * *

12.4 Relative Accuracy Audit. Calculate the quarterly RAA using Equation 16–9.

$$RAA = \frac{\overline{PEMS} - \overline{RM}}{\overline{RM}} x\,100 \qquad \text{Eq. 16-9}$$

* * * * *

13.5 Relative Accuracy Audits. The average of the three portable analyzer or RM determinations must not differ from the simultaneous PEMS average value by more than 10 percent of the analyzer or RM for concentrations greater than 100 ppm or 20 percent for concentrations between 100 and 20 ppm, or the test is failed. For measurements at 20 ppm or less, this difference must not exceed 2 ppm for a pollutant PEMS and 1 percent absolute for a diluents PEMS.

* * * * *

65. Amend Procedure 1 of Appendix F to Part 60 by revising Section 6.2 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

Procedure 1—Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination

* * * * *

6.2 RAA Accuracy Calculation. Use the calculation procedure in the relevant performance specification to calculate the accuracy for the RAA. The RAA must be calculated in the units of the applicable emission standard.

* * * * *

66. Amend Procedure 2 of Appendix F to Part 60 by revising paragraphs (3) and (4) in Section 12.0 to read as follows:

Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

12.0 * * *

(3) How do I calculate daily upscale and zero drift? You must calculate the upscale drift using Equation 2–2 and the zero drift using Equation 2–3:

$$UD = \frac{|R_{CEM} - R_U|}{FS} \times 100 \qquad \text{(Eq. 2-2)}$$

Where:

UD = The upscale drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response to the upscale check value, and

R_U = The upscale check value.

FS = Full-scale value.

$$ZD = \frac{|R_{CEM} - R_L|}{FS} \times 100 \qquad \text{(Eq. 2-3)}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response of the zero check value,

R_L = The zero check value, and

(4) How do I calculate SVA accuracy? You must use Equation 2–4 to calculate the accuracy, in percent, for each of the three SVA tests or the daily sample volume check:

$$Accuracy = \frac{(V_R - V_M)}{V_R} \times 100 \qquad \text{(Eq. 2-4)}$$

Where:

V_M = Sample gas volume determined/reported by your PM CEMS (*e.g.,* dscm),

V_R = Sample gas volume measured by the independent calibrated reference device (*e.g.,* dscm) for the SVA or the reference value for the daily sample volume check.

Note: Before calculating SVA accuracy, you must correct the sample gas volumes measured by your PM CEMS and the independent calibrated reference device to the same basis of temperature, pressure, and moisture content. You must document all data and calculations.

* * * * *

67. Amend Procedure 5 of Appendix F to Part 60 by redesignating the second listing of Section 6.2.6 as Section 6.2.7.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

68. The authority citation for Part 61 continues to read as follows:

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

69. Amend § 61.13 by revising paragraph (e)(1)(i) to read as follows:

§ 61.13 Emission tests and waiver of emission tests.

* * * * *

(e) * * *

(1) * * *

(i) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of Appendix A–3 of Part 60; Methods 6C, 7E, 9, and 10 of Appendix A–4 of Part 60; Method 18 and 19 of Appendix A–6 of Part 60; Methods 20, 22, and 25A of Appendix A–7 of Part 60; and Methods 303, 318, 320, and 321 of Appendix A of Part 63. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request, and the compliance authority may grant, a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

70. Amend § 61.33 by revising paragraph (a) to read as follows:

§ 61.33 Stack sampling.

(a) Unless a waiver of emission testing is obtained under § 61.13, each owner or operator required to comply with § 61.32(a) shall test emissions from the source according to Method 104 of Appendix B to this part or according to Method 29 of Appendix A to Part 60. Method 103 of Appendix B to this part is approved by the Administrator as an alternative method for sources subject to § 61.32(a). The emission test shall be performed:

(1) Within 90 days of the effective date in the case of an existing source or a new source which has an initial startup date preceding the effective date; or

(2) Within 90 days of startup in the case of a new source which did not have an initial startup date preceding the effective date.

* * * * *

71. Amend § 61.42 by revising paragraph (a) to read as follows:

§ 61.42 Emission standard.

(a) Emissions to the atmosphere from rocket-motor test sites shall not cause time-weighted atmospheric concentrations of beryllium to exceed 75 microgram minutes per cubic meter (μg-min/m^3) (4.68×10^{-9} pound minutes per cubic foot (lb-min/ft^3)) of air within the limits of 10 to 60 minutes, accumulated during any 2 consecutive weeks, in any area in which an adverse effect to public health could occur.

* * * * *

72. Amend § 61.53 by revising paragraph (d)(2) to read as follows:

§ 61.53 Stack sampling.

* * * * *

(d) * * *

(2) Method 101A in Appendix B or Method 29 in Appendix A to part 60 shall be used to test emissions as follows:

* * * * *

73. Amend § 61.164 by revising paragraphs (d)(2)(i), (e)(1)(i), and (e)(2) to read as follows:

§ 61.164 Test methods and procedures.

* * * * *

(d) * * *

(2) * * *

(i) Use Method 108 in Appendix B to this part or Method 29 in Appendix A to part 60 for determining the arsenic emission rate, g/hr (lb/hr). The emission rate shall equal the arithmetic mean of the results of three 60-minute test runs.

* * * * *

(e) * * *

(1) * * *

(i) Use Method 108 in Appendix B to this part or Method 29 in Appendix A to part 60 to determine the concentration of arsenic in the gas streams entering and exiting the control device. Conduct three 60-minute test runs, each consisting of simultaneous testing of the inlet and outlet gas streams. The gas streams shall contain all the gas exhausted from the glass melting furnace.

* * * * *

(2) Calculate the percent emission reduction for each run as follows:

$$D = \frac{(C_b - C_a)\ x\ 100}{C_b}$$

Where:

D = the percent emission reduction.

C_b = the arsenic concentration of the stack gas entering the control device, as measured by Method 108 or Method 29.

C_a = the arsenic concentration of the stack gas exiting the control device, as measured by Method 108 or Method 29.

* * * * *

74. Amend Method 101 of Appendix B to Part 61 by redesignating Sections 16 and 17 as Sections 17 and 18, respectively; and by adding a new Section 16 to read as follows:

Appendix B to Part 61—Test Methods

* * * * *

Method 101—Determination of Particulate and Gaseous Mercury Emissions From Chlor-Alkali Plants (Air Streams)

* * * * *

16.0 Alternative Procedures

16.1 Alternative Analyzer. Samples may also be analyzed by cold vapor atomic fluorescence spectrometry.

* * * * *

75. Amend Method 101A of Appendix B to Part 61 by redesignating Sections 16 and 17 as Sections 17 and 18, respectively; and by adding a new Section 16 to read as follows:

Method 101A—Determination of Particulate and Gaseous Mercury Emissions From Sewage Sludge Incinerators

* * * * *

16.0 Alternative Procedures

16.1 Alternative Analyzers.

16.1.1 Inductively coupled plasma-atomic emission spectrometry (ICP–AES) may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.1.1.2 The quality control procedures are conducted as prescribed.

16.1.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

6.1.2 Samples may also be analyzed by cold vapor atomic fluorescence spectrometry.

* * * * *

76. Amend Method 102 in Appendix B to Part 61 by revising Section 8.1.1.1 to read as follows:

Method 102—Determination of Particulate and Gaseous Mercury Emissions From Chlor-Alkali Plants (Hydrogen Streams)

* * * * *

8.1.1.1 Calibrate the meter box orifice. Use the techniques described in APTD–0576 (see Reference 9 in Section 17.0 of Method 5 of Appendix A to Part 60). Calibration of the orifice meter at flow conditions that simulate the conditions at the source is suggested. Calibration should either be done with hydrogen or with some other gas having a similar Reynolds Number so that there is similarity between the Reynolds Numbers during calibration and during sampling. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

77. Amend Method 104 in Appendix B to Part 61 as follows:

a. By revising Section 4.1.

b. By revising Section 11.5.3.

c. By redesignating Sections 16 and 17 as Sections 17 and 18 respectively.

d. By adding a new Section 16.

Method 104—Determination of Beryllium Emissions From Stationary Sources

* * * * *

4.1 Matrix Effects. Analysis for Be by flame atomic absorption spectrophotometry is sensitive to the chemical composition and to the physical properties (*e.g.,* viscosity, pH) of the sample. Aluminum and silicon, in particular, are known to interfere when present in appreciable quantities. The analytical procedure includes (optionally) the use of the Method of Standard Additions to check for these matrix effects, and sample analysis using the Method of Standard Additions if significant matrix effects are found to be present (see Reference 2 in Section 17.0).

* * * * *

11.5.3 Check for Matrix Effects (optional). Use the Method of Standard Additions (see Reference 2 in Section 17.0) to check at least one sample from each source for matrix effects on the Be results. If the results of the Method of Standard Additions procedure used on the single source sample do not agree to within 5 percent of the value obtained by the routine atomic absorption analysis, then reanalyze all samples from the source using the Method of Standard Additions procedure.

* * * * *

16.0 Alternative Procedures

16.1 Alternative Analyzer. Inductively coupled plasma-atomic emission spectrometry (ICP–AES) may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.1.2 Quality Assurance/Quality Control procedures, including audit material analysis, are conducted as prescribed in the method. The QA acceptance conditions must be met.

16.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

* * * * *

78. Amend Method 108 of Appendix B to Part 61 by redesignating Sections 16 and 17 as Sections 17 and 18 respectively, and by adding a new Section 16 to read as follows:

Method 108—Determination of Particulate and Gaseous Arsenic Emissions

* * * * *

16.0 Alternative Procedures

16.1 Alternative Analyzer. Inductively coupled plasma-atomic emission spectrometry (ICP–AES) may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.1.2 Quality Assurance/Quality Control procedures, including audit material analysis, are conducted as prescribed in the method. The QA acceptance conditions must be met.

16.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

* * * * *

79. Amend Method 108A of Appendix B to Part 61 by redesignating Sections 16 and 17 as Sections 17 and 18 respectively, and by adding a new Section 16 to read as follows:

Method 108A—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters

* * * * *

16.0 Alternative Procedures

16.1 Alternative Analyzer. Inductively coupled plasma-atomic emission spectrometry (ICP–AES) may be used as an alternative to atomic absorption analysis provided the following conditions are met:

16.1.1 Sample collection, sample preparation, and analytical preparation procedures are as defined in the method except as necessary for the ICP–AES application.

16.1.2 Quality Assurance/Quality Control procedures, including audit material analysis, are conducted as prescribed in the method. The QA acceptance conditions must be met.

16.1.3 The limit of quantitation for the ICP–AES must be demonstrated and the sample concentrations reported should be no less than two times the limit of quantitation. The limit of quantitation is defined as ten times the standard deviation of the blank value. The standard deviation of the blank value is determined from the analysis of seven blanks. It has been reported that for mercury and those elements that form hydrides, a continuous-flow generator coupled to an ICP–AES offers detection limits comparable to cold vapor atomic absorption.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

80. The authority citation for part 63 continues to read as follows:

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

81. Amend § 63.7 by revising paragraph (c)(2)(iii)(A) to read as follows:

§ 63.7 Performance testing requirements.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of Appendix A–3 of Part 60; Methods 6C, 7E, 9, and 10 of Appendix A–4 of Part 60; Methods 18 and 19 of Appendix A–6 of Part 60; Methods 20, 22, and 25A of Appendix A–7 of Part 60; and Methods 303, 318, 320, and 321 of Appendix A of Part 63. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. ''Commercially available'' means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA web site at the following URL, *www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request, and the compliance authority may grant, a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

82. Amend § 63.8 by adding a sentence to the end of paragraph (f)(6)(iii) to read as follows:

§ 63.8 Monitoring requirements.

* * * * *

(f) * * *

(6) * * *

(iii) * * * The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 8.4 of Performance Specification 2.

* * * * *

83. Amend § 63.144 by adding paragraphs (b)(5)(i)(G) and (b)(5)(i)(H) to read as follows:

§ 63.144 Process wastewater provisions—test methods and procedures for determining applicability and Group 1/Group 2 determinations (determining which wastewater streams require control).

* * * * *

(b) * * *

(5) * * *

(i) * * *

(G) *Method 8260B.* Use procedures specified in Method 8260B in the SW–846 Compendium of Methods.

(H) *Method 316.* Use Method 316 to determine formaldehyde concentration.

* * * * *

84. Amend § 63.344 by adding paragraph (c)(5) to read as follows:

§ 63.344 Performance test requirements and test methods.

* * * * *

(c) * * *

(5) The South Coast Air Quality Management District (SCAQMD) Method 205.1 (which is available by contacting the South Coast AQMD, 21865 Copley Dr., Diamond Bar, CA 91765) may be used to determine the total chromium concentration from hard and decorative chromium electroplating tanks and chromium anodizing tanks.

* * * * *

85. Amend § 63.364 by revising paragraph (e) to read as follows:

§ 63.364 Monitoring requirements.

* * * * *

(e) Measure and record once per hour the ethylene oxide concentration at the outlet to the atmosphere after any control device according to the procedures specified in § 63.365(c)(1). The owner or operator shall compute and record a 24-hour average daily. The owner or operator will install, calibrate, operate, and maintain a monitor consistent with the requirements of performance specification (PS) 8 or 9 in 40 CFR part 60, Appendix B, to measure ethylene oxide. The daily calibration requirements of section 7.2 of PS–9 or Section 13.1 of PS–8 are required only

on days when ethylene oxide emissions are vented to the control device.

* * * * *

86. Amend § 63.365 by revising paragraph (b) introductory text to read as follows:

§ 63.365 Test methods and procedures.

* * * * *

(b) *Efficiency at the sterilization chamber vent.* California Air Resources Board (CARB) Method 431 or the following procedures shall be used to determine the efficiency of all types of control devices used to comply with § 63.362(c), sterilization chamber vent standard.

* * * * *

87. Amend § 63.565 by revising paragraphs (d)(5), (8), and (10) and (g) to read as follows:

§ 63.565 Test methods and procedures.

* * * * *

(d) * * *

(5) *Recovery devices.* The average VOC concentration in the vent upstream and downstream of the control device shall be determined using Method 25A or 25B of Appendix A to part 60 of this chapter for recovery devices. The average VOC concentration shall correspond to the volume measurement by taking into account the sampling system response time.

* * * * *

(8) Where Method 25, 25A, or 25B is used to measure the percent reduction in VOC, the percent reduction across the combustion or recovery device shall be calculated as follows:

$$R = \frac{E_i - E_o}{E_i}(100\%)$$

Where:

R = control efficiency of control device, percent.

E_i = mass flow rate of VOC at the inlet to the combustion or recovery device as calculated under paragraph (c)(7) of this section, kg/hr.

E_o = mass flow rate of VOC at the outlet of the combustion or recovery device, as calculated under paragraph (c)(7) of this section, kg/hr.

* * * * *

(10) Use of methods other than Method 25, 25A, or 25B shall be validated pursuant to Method 301 of Appendix A to part 63 of this chapter.

* * * * *

(g) *Baseline outlet VOC concentration.* The procedures in this paragraph shall be used to determine the outlet VOC concentration required in § 63.563(b)(4), (6), (7), and (8) for combustion devices except flare, carbon adsorbers, condenser/refrigeration units, and absorbers, respectively, and to monitor the VOC concentration as required in § 63.564(e), (g), (h), and (i). The owner or operator shall use the procedures outlined in Method 25A or 25B. For the baseline VOC concentration, the arithmetic average of the outlet VOC concentration from three test runs from paragraph (d) of this section shall be calculated for the control device. The VOC concentration shall be measured at least every 15 minutes. Compliance testing of VOC CEMS shall be performed using PS 8.

* * * * *

88. Amend § 63.750 by revising paragraph (o) to read as follows:

§ 63.750 Test methods and procedures.

* * * * *

(o) *Inorganic HAP emissions—dry particulate filter certification requirements.* Dry particulate filters used to comply with § 63.745(g)(2) or § 63.746(b)(4) must be certified by the filter manufacturer or distributor, paint/depainting booth supplier, and/or the facility owner or operator using method 319 in Appendix A of this part, to meet or exceed the efficiency data points found in Tables 1 and 2, or 3 and 4 of § 63.745 for existing or new sources respectively.

89. Amend § 63.1251 by revising the definition of ''Process vent'' to read as follows:

§ 63.1251 Definitions.

* * * * *

Process vent means a vent from a unit operation or vents from multiple unit operations within a process that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, and process tanks. Emission streams that are undiluted and uncontrolled containing less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream or using an engineering assessment as discussed in § 63.1257(d)(2)(ii); test data using Method 18 of 40 CFR part 60, Appendix A; Method 320 of 40 CFR part 63; or any other test method that has been validated according to the procedures in Method 301 of Appendix A of this part, are not considered process vents. Process vents do not include vents on storage tanks regulated under § 63.1253, vents on wastewater emission sources regulated under § 63.1256, or pieces of equipment regulated under § 63.1255.

* * * * *

90. Amend § 63.1511 by revising paragraph (c)(9) as to read follows:

§ 63.1511 Performance test/compliance demonstration general requirements.

* * * * *

(c) * * *

(9) Method 26A for the concentration of HCl. Where a lime-injected fabric filter is used as the control device to comply with the 90 percent reduction standard, the owner or operator must measure the fabric filter inlet concentration of HCl at a point before lime is introduced to the system. Method 26 may be used in place of Method 26A where it can be demonstrated that there are no water droplets in the emission stream. This can be demonstrated by showing that the vapor pressure of water in the emission stream that you are testing is less than the equilibrium vapor pressure of water at the emission stream temperature, and by certifying that the emission stream is not controlled by a wet scrubber.

* * * * *

Subpart CCCC—National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast

91. Subpart CCCC of Part 63 is amended by revising Table 2 to read as follows:

TABLE 2 TO SUBPART CCCC OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in § 63.2161, if you demonstrate compliance by monitoring brew ethanol, you must comply with the requirements for performance tests in the following table (brew ethanol monitoring only)]

For each fed-batch fermenter for which compliance is determined by monitoring brew ethanol concentration and calculating VOC concentration in the fermenter exhaust according to the procedures in § 63.2161, you must . . .	Using . . .	According to the following requirements . . .
1. Measure VOC as propane	Method 25A *, or an alternative validated by EPA Method 301 * and approved by the Administrator.	You must measure the VOC concentration in the fermenter exhaust at any point prior to the dilution of the exhaust stream.

* EPA Test Methods found in Appendix A of 40 CFR part 60.

Subpart UUUU—National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing

92. Amend Subpart UUUU by revising Table 4 to read as follows:

Table 4 to Subpart UUUU of Part 63—Requirements for Performance Tests

As required in §§ 63.5530(b) and 63.5535(a), (b), (g)(1), and (h)(1), you must conduct performance tests, other initial compliance demonstrations, and CEMS performance evaluations and establish operating limits according to the requirements in the following table:

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
1. the sum of all process vents	a. each existing or new affected source.	i. select sampling port's location and the number of traverse points;	EPA Method 1 or 1A in Appendix A to 40 CFR § 63.7(d)(1)(i);	sampling sites must be located at the inlet and outlet to each control device;
		ii. determine velocity and volumetric flow rate;	EPA Method 2, 2A, 2C, 2D, 2F, or 2G in Appendix A to part 60 of this chapter;	you may use EPA Method 2A, 2C, 2D, 2F, or 2G as an alternative to using EPA Method 2, as appropriate;
		iii. conduct gas analysis; and,	(1) EPA Method 3, 3A, or 3B in Appendix A to part 60 of this chapter; or, (2) ASME PTC 19.101981—Part 10; and,	you may use EPA Method 3A or 3B as an alternative to using EPA Method 3; or, you may use ASME PTC 19.10–1981—Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to using EPA Method 3B.
		iv. measure moisture content of the stack gas.	EPA Method 4 in Appendix A to part 60 of this chapter.	
2. the sum of all viscose process vents.	a. each existing or new viscose process source.	i. measure total sulfide emissions.	(1) EPA Method 15 in Appendix A to part 60 of this chapter; or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you must conduct testing of emissions from continuous viscose process vents and combinations of batch and continuous viscose process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (c) you must conduct testing of emissions from batch viscose process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (d) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration; or
			(2) carbon disulfide and/or hydrogen sulfide CEMS, as applicable;	(a) you must measure emissions at the inlet and outlet of each control device using CEMS;

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
				(b) you must install, operate, and maintain the CEMS according to the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, Appendix B; and (c) you must collect CEMS emissions data at the inlet and outlet of each control device during the period of the initial compliance demonstration and determine the CEMS operating limit during the period of the initial compliance demonstration.
3. the sum of all solvent coating process vents.	a. each existing or new cellophane operation.	i. measure toluene emissions ..	(1) EPA Method 18 in Appendix A to part 60 of this chapter, or Method 320 in appendix A to part 63, or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 or 320 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the initial compliance demonstration; or
			(2) ASTM D6420–99	(a) you must conduct testing of emissions at the inlet and outlet of each control device;

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
				(b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: The target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 parts per billion by volume (ppbv) and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; (c) you must conduct testing of emissions from continuous solvent coating process vents and combinations of batch and continuous solvent coating process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch solvent coating process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and, (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration.
4. the sum of all cellulose ether process vents.	a. each existing or new cellulose ether operation.	i. measure total organic HAP emissions.	(1) EPA Method 18 in Appendix A to Part 60 of this chapter or Method 320 in Appendix A to Part 63, or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 or 320 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device;

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
				(c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test;
			(2) ASTM D6420–99	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: The target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; target concentration is between 150 ppbv and 100 ppmv for target compound(s). (c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535;

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
				(d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test.
			(3) EPA Method 25 in Appendix A to Part 60 of this chapter; or	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 25 to determine the control efficiency of combustion devices for organic compounds; you may not use EPA Method 25 to determine the control efficiency of non-combustion control devices; (c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test; or
			(4) EPA Method 25A in Appendix A to Part 60 of this chapter.	(a) you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 25A if: An exhaust gas volatile organic matter concentration of 50 ppmv or less is required in order to comply with the emission limit; the volatile organic matter concentration at the inlet to the control device and the required level of control are such as to result in exhaust volatile organic matter concentrations of 50 ppmv or less; or because of the high control efficiency of the control device, the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of the inlet concentration;

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
				(c) you must conduct testing of emissions from continuous cellulose ether process vents and combinations of batch and continuous cellulose ether process vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535; (d) you must conduct testing of emissions from batch cellulose ether process vents as specified in § 63.490(c), except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and, (e) you must collect CPMS data during the period of the initial performance test and determine the CPMS operating limit during the period of the initial performance test.
5. each toluene storage vessel	a. each existing or new cellophane operation.	i. measure toluene emissions ..	(1) EPA Method 18 in Appendix A to Part 60 of this chapter or Method 320 in Appendix A to Part 63; or	(a) if venting to a control device to reduce emissions, you must conduct testing of emissions at the inlet and outlet of each control device; (b) you may use EPA Method 18 or 320 to determine the control efficiency of any control device for organic compounds; for a combustion device, you must use only HAP that are present in the inlet to the control device to characterize the percent reduction across the combustion device; (c) you must conduct testing of emissions from continuous storage vessel vents and combinations of batch and continuous storage vessel vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535 for continuous process vents; (d) you must conduct testing of emissions from batch storage vessel vents as specified in § 63.490(c) for batch process vents, except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and, (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration; or
			(2) ASTM D6420–99	(a) if venting to a control device to reduce emissions, you must conduct testing of emissions at the inlet and outlet of each control device;

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
				(b) you may use ASTM D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and the target concentration is between 150 ppbv and 100 ppmv; for target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble; and for target compound(s) not listed in Section 1.1 of ASTM D6420–99 and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply; (c) you must conduct testing of emissions from continuous storage vessel vents and combinations of batch and continuous storage vessel vents at normal operating conditions, as specified in §§ 63.7(e)(1) and 63.5535 for continuous process vents; (d) you must conduct testing of emissions from batch storage vessel vents as specified in § 63.490(c) for batch process vents, except that the emission reductions required for process vents under this subpart supersede the emission reductions required for process vents under subpart U of this part; and, (e) you must collect CPMS data during the period of the initial compliance demonstration and determine the CPMS operating limit during the period of the initial compliance demonstration.
6. the sum of all process vents controlled using a flare.	a. each existing or new affected source.	i. measure visible emissions	(1) EPA Method 22 in Appendix A to Part 60 of this chapter.	(a) you must conduct the flare visible emissions test according to § 63.11(b).
7. equipment leaks	a. each existing or new cellulose ether operation.	i. measure leak rate	(1) applicable equipment leak test methods in § 63.180; or (2) applicable equipment leak test methods in § 63.1023.	(a) you must follow all requirements for the applicable equipment leak test methods in § 63.180; or (a) you must follow all requirements for the applicable equipment leak test methods in § 63.1023.

For . . .	At . . .	You must . . .	Using . . .	According to the following requirements . . .
8. all sources of wastewater emissions.	a. each existing or new cellulose ether operation.	i. measure wastewater HAP emissions.	(1) applicable wastewater test methods and procedures in §§ 63.144 and 63.145; or (2) applicable wastewater test methods and procedures in §§ 63.144 and 63.145, using ASTM D5790–95 as an alternative to EPA Method 624 in Appendix A to Part 163 of this chapter.	(a) You must follow all requirements for the applicable wastewater test methods and procedures in §§ 63.144 and 63.145; or (a) you must follow all requirements for the applicable waste water test methods and procedures in §§ 63.144 and 63.145, except that you may use ASTM D5790–95 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106) as an alternative to EPA Method 624, under the condition that this ASTM method be used with the sampling procedures of EPA Method 25D or an equivalent method.
9. any emission point	a. each existing or new affected source using a CEMS to demonstrate compliance.	i. conduct a CEMS performance evaluation.	(1) applicable requirements in § 63.8 and applicable performance specification (PS–7, PS–8, PS–9, or PS–15) in Appendix B to part 60 of this chapter.	(a) you must conduct the CEMS performance evaluation during the period of the initial compliance demonstration according to the applicable requirements in § 63.8 and the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, Appendix B; (b) you must install, operate, and maintain the CEMS according to the applicable performance specification (PS–7, PS–8, PS–9, or PS–15) of 40 CFR part 60, Appendix B; and (c) you must collect CEMS emissions data at the inlet and outlet of each control device during the period of the initial compliance demonstration and determine the CEMS operating limit during the period of the initial compliance demonstration.

Subpart ZZZZ—National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

93. Amend Subpart ZZZZ by revising Table 4 to read as follows:

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in §§ 63.6610, 63.6611, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE]

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
1. 2SLB, 4SLB, and CI stationary RICE.	a. Reduce CO emissions.	i. Measure the O_2 at the inlet and outlet of the control device; and	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00 (2005) [a] (heated probe not necessary; single-point sampling) (incorporated by reference, see § 63.14). Measurements to determine O_2 must be made at the same time as the measurements for CO concentration.

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §§ 63.6610, 63.6611, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE]

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		ii. Measure the CO at the inlet and the outlet of the control device.	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00 (2005) [a] (heated probe not necessary; single-point sampling) (incorporated by reference, see § 63.14) or Method 10 of 40 CFR part 60, Appendix A. The CO concentration must be at 15 percent O_2, dry basis.
2. 4SRB stationary RICE.	a. Reduce formaldehyde emissions.	i. Sample at the centroid of the exhaust;	.....	(a) Sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device.	(1) Method 3 or 3A or 3B of 40 CFR part 60, Appendix A, or ASTM Method D6522–00 (2005) (heated probe not necessary; single-point sampling).	(a) Measurements to determine O_2 concentration must be made at the same time as the measurements for formaldehyde concentration.
		iii. Measure moisture content at the inlet and outlet of the control device; and	(1) Method 4 of 40 CFR part 60, Appendix A, or Test Method 320 of 40 CFR part 63, Appendix A, or ASTM D 6348–03.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.
		iv. Measure formaldehyde at the inlet and the outlet of the control device.	(1) Method 320 or 323 of 40 CFR part 63, Appendix A; or ASTM D6348–03,[b] provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
3. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust.	i. Sample at the centroid of the exhaust;		(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary RICE exhaust at the sampling port location;	(1) Method 3 or 3A or 3B of 40 CFR part 60, Appendix A, or ASTM Method D6522–00 (2005) (heated probe not necessary; single-point sampling).	(a) Measurements to determine O_2 concentration must be made at the same time and location as the measurements for formaldehyde concentration.
		iii. Measure moisture content of the stationary RICE exhaust at the sampling port location; and,	(1) Method 4 of 40 CFR part 60, Appendix A, or Test Method 320 of 40 CFR part 63, Appendix A, or ASTM D 6348–03.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.

TABLE 4 TO SUBPART ZZZZ OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §§ 63.6610, 63.6611, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE]

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		iv. Measure formaldehyde at the exhaust of the stationary RICE.	(1) Method 320 or 323 of 40 CFR part 63, Appendix A; or ASTM D6348–03,[b] provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

[a] You may also use Methods 3A and 10 as options to ASTM–D6522–00 (2005). You may obtain a copy of ASTM–D6522–00 (2005) from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

[b] You may obtain a copy of ASTM–D6348–03 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

94. Amend Method 306 of Appendix A to Part 63 by revising Sections 2.2.1, 6.1.4, and 8.0 to read as follows:

Appendix A to Part 63—Test Methods Pollutant Measurement Methods From Various Waste Media

* * * * *

Method 306—Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Chromium Anodizing Operations—Isokinetic Method

* * * * *

2.2.1 Total chromium samples with high chromium concentrations (≥35 μg/L) may be analyzed using inductively coupled plasma emission spectrometry (ICP) at 267.72 nm. *Note:* The ICP analysis is applicable for this method only when the solution analyzed has a Cr concentration greater than or equal to 35 μg/L or five times the method detection limit as determined according to Appendix B in 40 CFR part 136. Similarly, inductively coupled plasma-mass spectroscopy (ICP–MS) may be used for total chromium analysis provided the procedures for ICP–MS analysis described in Method 6020 or 6020A (EPA Office of Solid Waste, publication SW–846) are followed.

* * * * *

6.1.4 Operating and maintenance procedures for the sampling train are described in APTD–0576 of Method 5. Users should read the APTD–0576 document and adopt the outlined procedures. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

8.0 Sample Collection, Preservation, Holding Times, Storage, and Transport

Note: Prior to sample collection, consideration should be given to the type of analysis (Cr^{+6} or total Cr) that will be performed. Which analysis option(s) will be performed will determine which sample recovery and storage procedures will be required to process the sample.

* * * * *

95. Amend Method 306A of Appendix A to Part 63 by revising Section 8.2 to read as follows:

Method 306A—Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Chromium Anodizing Operations

* * * * *

8.2 Sample Recovery. After the train has been transferred to the sample recovery area, disconnect the tubing that connects the jar/impingers. The tester shall select either the total Cr or Cr^{+6} sample recovery option. Samples to be analyzed for both total Cr and Cr^{+6} shall be recovered using the Cr^{+6} sample option (Section 8.2.2). *Note:* Collect a reagent blank sample for each of the total Cr or the Cr^{+6} analytical options. If both analyses (Cr and Cr^{+6}) are to be conducted on the samples, collect separate reagent blanks for each analysis. Also, since particulate matter is not usually present at chromium electroplating and/or chromium anodizing operations, it is not necessary to filter the Cr^{+6} samples unless there is observed sediment in the collected solutions. If it is necessary to filter the Cr^{+6} solutions, please refer to Method 0061, Determination of Hexavalent Chromium Emissions from Stationary Sources, Section 7.4, Sample Preparation in SW–846 (see Reference 1).

* * * * *

96. Amend Method 308 of Appendix A to Part 63 by revising Section 10.1.3 to read as follows:

Method 308—Procedure for Determination of Methanol Emission From Stationary Sources

* * * * *

10.1.3 Temperature Sensors. Calibrate against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

97. Amend Method 315 of Appendix A to Part 63 by revising Sections 6.1.1 and 10.5 and by redesignating Section 8.11 as 8.1 and revising newly designated section 8.1 to read as follows:

Method 315—Determination of Particulate and Methylene Chloride Extractable Matter (MCEM) From Selected Sources at Primary Aluminum Production Facilities

* * * * *

6.1.1 Sampling train. A schematic of the sampling train used in this method is shown in Figure 5–1, Method 5, 40 CFR part 60, Appendix A. Complete construction details are given in APTD–0581 (Reference 2 in section 17.0 of this method); commercial models of this train are also available. For changes from APTD–0581 and for allowable modifications of the train shown in Figure 5–1, Method 5, 40 CFR part 60, Appendix A, see the following subsections. *Note:* The operating and maintenance procedures for the sampling train are described in APTD–0576 (Reference 3 in section 17.0 of this method). Since correct usage is important in obtaining valid results, all users should read APTD–0576 and adopt the operating and maintenance procedures outlined in it, unless otherwise specified herein. Alternative mercury-free thermometers may be used if the thermometers are, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application. The use of grease for sealing sampling train components is not recommended because many greases are soluble in methylene chloride. The sampling train consists of the following components:

* * * * *

8.1 Pretest preparation. It is suggested that sampling equipment be maintained according to the procedures described in APTD–0576. Alternative mercury-free thermometers may be used if the thermometers are at a minimum equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

10.5 Temperature sensors. Use the procedure in Section 10.3 of Method 2, 40 CFR part 60, Appendix A to calibrate in-stack temperature sensors. Dial thermometers, such as are used for the DGM and condenser outlet, shall be calibrated against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

98. Amend Method 316 of Appendix A to Part 63 by revising Section 10.5 to read as follows:

Method 316—Sampling and Analysis for Formaldehyde Emissions From Stationary Sources in the Mineral Wool and Wool Fiberglass Industries

* * * * *

10.5 Temperature gauges: Use the procedure in Section 4.3 of EPA Method 2 to calibrate in-stack temperature gauges. Dial thermometers, such as are used for the dry gas meter and condenser outlet, shall be calibrated against mercury-in-glass thermometers. An alternative mercury-free thermometer may be used if the thermometer is, at a minimum, equivalent in terms of performance or suitably effective for the specific temperature measurement application.

* * * * *

99. Amend Method 321 of Appendix A to Part 63 by revising the definition for the term ''D_f'' after equation (2) in Section 9.3.1 to read as follows:

Test Method 321—Measurement of Gaseous Hydrogen Chloride Emissions at Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy

* * * * *

9.3 * * *

DF = Dilution Factor (Total flow/Spike flow). Total flow = spike flow plus effluent flow.

* * * * *

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Part III

Commodity Futures Trading Commission

17 CFR Part 43

Real-Time Public Reporting of Swap Transaction Data; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD08

Real-Time Public Reporting of Swap Transaction Data

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is adopting regulations to implement certain statutory provisions enacted by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). Specifically, in accordance with the Dodd-Frank Act, the Commission is adopting rules to implement a framework for the real-time public reporting of swap transaction and pricing data for all swap transactions.

DATES: *Effective date:* March 9, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas Leahy, Associate Director, Division of Market Oversight (''DMO'') at (202) 418–5278 or *tleahy@cftc.gov;* Jeffrey L. Steiner, Special Counsel, DMO at (202) 418–5482 or *jsteiner@cftc.gov;* Susan Nathan, Senior Special Counsel, DMO at (202) 418–5133 or *snathan@cftc.gov;* Jason Shafer, Attorney-Advisor, Office of General Counsel at (202) 418–5097 or *jshafer@cftc.gov;* or Laurie Gussow, Attorney-Advisor, DMO at (202) 418–7623 or *lgussow@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Overview
B. Summary of the Proposed Part 43 Regulations
1. Proposed § 43.3—Method and Timing for Real-Time Public Reporting
2. Proposed § 43.4—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time
3. Proposed § 43.5—Block Trades and Large Notional Swaps for Particular Markets and Transactions
4. Proposed Appendix A to Part 43
C. Overview of Comments Received
D. Proposed § 43.5—Block Trades and Large Notional Swaps
II. Part 43 of the Commission's Regulations—Final Rules
A. Section 43.1—Purpose, Scope and Rules of Construction
1. Scope—Generally
2. Swaps Between Affiliates and Portfolio Compression Exercises
3. Uncleared or Bespoke Swaps
4. Foreign Exchange (''FX'') Asset Class
5. Limitations and Special Accommodations
6. Liquidity
7. International Issues
8. Final Rule Text of § 43.1
B. Section 43.2—Definitions
1. Harmonization
2. Defined Terms
3. Additional Issues Relating to Defined Terms
C. Section 43.3—Method and Timing for Real-Time Public Reporting
1. Responsibilities of Parties to a Swap (§ 43.3(a))
2. Public Dissemination of Swap Transaction and Pricing Data (§ 43.3(b))
3. Requirements for Registered Swap Data Repositories in Providing the Public Dissemination of Swap Transaction and Pricing Data (§ 43.3(c))
4. Requirements for Third-Party Service Providers (Proposed § 43.3(d))
5. Availability of Swap Transaction and Pricing Data to the Public (§ 43.3(d))
6. Errors and Omissions (§ 43.3(e))
7. Hours of Operation of Registered Swap Data Repositories (§ 43.3(f))
8. Acceptance of Data During Closing Hours (§ 43.3(g))
9. Timestamp Requirements (§ 43.3(h))
10. Fees Charged by SDRs (§ 43.3(i))
D. Section 43.4—Swap Transaction and Pricing Data to be Publicly Disseminated in Real-Time
1. In General (§ 43.4(a))
2. Public Dissemination of Data Fields (§ 43.4(b))
3. Additional Swap Information (§ 43.4(c))
4. Amendments to Data Fields (Proposed § 43.4(d))
5. Anonymity of the Parties to a Publicly Reportable Swap Transaction (§ 43.4(d))
6. Unique Product Identifier (§ 43.4(e))
7. Reporting of Notional or Principal Amounts to a Registered Swap Repository (§ 43.4(f))
8. Public Dissemination of Rounded Notional or Principal Amounts (§ 43.4(g))
9. Public Dissemination Caps on Notional or Principal Amounts (§ 43.4(h))
E. Section 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data
F. Appendix A to Part 43 (''Data Fields for Public Dissemination'')
III. Effectiveness/Implementation and Interim Period
IV. Paperwork Reduction Act
V. Cost-Benefit Considerations
VI. Regulatory Flexibility Act
VII. List of Commenters

I. Background

A. Overview

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') [1] Title VII of which amended the Commodity Exchange Act (''CEA'' or the ''Act'') [2] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was intended to reduce risk, increase transparency and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers (''SDs'') and major swap participants (''MSPs''); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 727 of the Dodd-Frank Act added to the CEA new section 2(a)(13), which establishes standards and requirements related to real-time reporting and the public availability of swap transaction and pricing data. This section directs the Commission to promulgate rules providing for the public availability of such data in real-time,[3] in such form and at such times as the Commission deems appropriate to enhance price discovery.[4] CEA section 2(a)(13)(C) establishes the four types of swaps for which transaction and pricing data must be reported to the public in real-time.[5] Because these categories together comprise all swaps, the real-time reporting requirements apply to all swaps, including those swaps executed on or pursuant to the rules of a registered swap execution facility (''SEF'') or a designated contract market (''DCM''), and those swaps executed bilaterally between counterparties and

[1] Public Law 111–203, 124 Stat. 1376 (2010), available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.* Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[2] 7 U.S.C. 1, *et seq.*

[3] New Section 2(a)(13)(A) of the CEA defines real-time public reporting as reporting ''data relating to a swap transaction, including price and volume, 'as soon as technologically practicable' after the time at which the swap transaction has been executed.''

[4] CEA section 2(a)(13)(B) states that ''[t]he purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.''

[5] The four categories are: (i) Swaps that are subject to the mandatory clearing requirement in CEA section 2(h)(1) [added by Section 723(a)(3) of the Dodd-Frank Act]; (ii) swaps that are not subject to the mandatory clearing requirement but are nonetheless cleared at a registered derivatives clearing organization (''DCO''); (iii) swaps that are not cleared at a registered DCO and which are reported to a registered swap data repository (''SDR'') or to the Commission pursuant to CEA section 2(h)(6); and (iv) swaps that are ''determined to be required to be cleared'' under CEA section 2(h)(2) but are not cleared.

not pursuant to the rules of a SEF or DCM (''off-facility swaps'').[6]

With regard to swaps that are subject to the mandatory clearing requirement (or excepted from such requirement) and those that are not required to be cleared by a registered DCO but are cleared, CEA section 2(a)(13)(E) directs the Commission to prescribe rules that (i) ensure that publicly disclosed information does not identify the participants; (ii) specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts; (iii) specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public; and (iv) take into account whether public disclosure will materially reduce market liquidity. CEA section 2(a)(13)(E) does not require explicitly that the rules promulgated by the Commission contain similar provisions for the uncleared swaps described in CEA section 2(a)(13)(C)(iii) and (iv). However, in exercising its authority under CEA section 2(a)(13)(B) to ''make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery,'' the Commission is authorized to prescribe rules similar to those provisions in CEA section 2(a)(13)(E) for uncleared swaps described in CEA sections 2(a)(13)(C)(iii) and (iv).[7]

B. Summary of the Proposed Part 43 Regulations

On December 7, 2010, the Commission published for comment proposed part 43 of its regulations to implement the real-time reporting mandate of the Dodd-Frank Act.[8] At the foundation of these regulations was the Commission's belief that real-time public dissemination of swap transaction and pricing data supports the fairness and efficiency of markets and increases transparency, which in turn improves price discovery and decreases risk (*e.g.,* liquidity risk). The Commission's Proposing Release thus introduced, in addition to definitions of terms and processes relevant to real-time public reporting, rules governing: (1) The entities or persons that shall be responsible for reporting swap transaction and pricing data; (2) the entities or persons that shall be responsible for publicly disseminating such data; (3) the data fields and guidance with respect to the appropriate format and manner for data to be reported to the public in real time; (4) the appropriate minimum size and time delay for block trades and large notional swaps; and (5) the proposed effective date and implementation schedule for the proposed rules.

The Commission's proposed part 43 rules reflected consultation with staff of both the Securities and Exchange Commission (the ''SEC'')[9] and the Board of Governors of the Federal Reserve.[10] The proposed rules also were informed by discussions during a joint public roundtable to discuss swap data, SDRs and real-time reporting conducted by CFTC and SEC staff on September 14, 2010 (the ''Roundtable''); public comments received and posted on the Commission's Internet Web site;[11] and meetings and discussions between CFTC staff and market participants.

As proposed, part 43 applied to all swaps[12] as defined in CEA section 1a(47) and as may be further defined by Commission regulations. The proposed rules applied real-time reporting requirements to registered entities (SEFs, DCMs and registered swap data repositories (''SDRs'')) and the swap counterparties—including registered or exempt SDs, registered or exempt MSPs and U.S.-based end-users.

1. Proposed § 43.3—Method and Timing for Real-Time Public Reporting

CEA section 2(a)(13) directed the Commission to prescribe rules specifying the method and timing for real time public reporting. Consistent with that mandate, the Commission proposed in § 43.3 to require: (1) The parties to a swap transaction (including agents of the parties) to report swap transaction and pricing data to the appropriate registered entity in a timely manner;[13] and (2) registered entities to publicly disseminate swap transaction and pricing data.[14] To implement its authority to make swap transaction and pricing data available to the public in such form and at such times as it determines appropriate to enhance price discovery, the Commission proposed in § 43.3 to establish the manner in which swap counterparties must report the swap transaction and pricing data to the appropriate registered entity, the manner in which registered entities must publicly disseminate the data in real time and the responsibilities of the reporting party to each swap. Proposed § 43.3 also established requirements for acceptance and public dissemination of swap transaction and pricing data by SDRs and third-party service providers and specified standards for data recordkeeping and retention as well as availability and accessibility of real-time swap transaction and pricing data. In addition, proposed § 43.3 established the process by which errors or omissions in publicly disseminated swap transaction and pricing data would be cancelled and/or corrected, the hours of operation for SDRs and the procedures for scheduling closing hours.

2. Proposed § 43.4—Swap Transaction and Pricing Data To Be Publicly Disseminated in Real-Time

CEA section 2(a)(13)(B) directs the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery. Proposed § 43.4 required that swap transaction information be reported to a real-time disseminator and established the manner and format in which this data will be publicly disseminated. In that regard, appendix A to proposed part 43 provides a list of data fields which an SDR must publicly disseminate regarding swap transactions, and pricing data, as well as guidance on an acceptable public reporting format and order for the listed data fields.

CEA sections 2(a)(13)(C) and (E) reflect Congress' intent that regulators ''ensure that the public reporting of swap transactions and pricing data does not disclose the names or identities of

[6] As explained more fully in the Commission's Notice of Proposed Rulemaking, the legislative history of the Dodd-Frank Act suggests that the real-time reporting requirements of CEA section 2(a)(13) apply to all swaps. *See* Commission, Notice of Proposed Rulemaking: Real-Time Public Reporting of Swap Transaction Data, 75 FR 76140 (Dec. 7, 2010) (''Real-Time NPRM'' or ''Proposing Release'').

[7] In addition, the Commission is required by CEA section 2(a)(13)(C)(iii) to prescribe real-time public reporting requirements for uncleared swaps, other than those uncleared swaps described in CEA section 2(a)(13)(C)(iv), ''in a manner that does not disclose the business transactions and market positions of any person.''

[8] *See* Real-Time NPRM *supra* note 6. Interested persons are directed to the Real-Time NPRM for a full discussion of each of the proposed part 43 rules.

[9] Section 763 of the Dodd-Frank Act authorizes the SEC to promulgate rules ''to provide for the public availability of security-based swap transaction, volume, and pricing data * * *.'' The SEC is adopting rules related to the real-time reporting of security-based swaps as required by Section 763 of the Dodd-Frank Act.

[10] Section 712(a)(1) of the Dodd-Frank Act requires staff to consult with the SEC and other prudential regulators.

[11] Comment letters received in response to the Proposing Release may be found on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=919.*

[12] As noted, the categories of swaps described in CEA section 2(a)(13)(C) account for all swaps, whether cleared or uncleared and regardless of whether executed on or pursuant to the rules of a SEF or DCM, or executed off-facility.

[13] *See* CEA section 2(a)(13)(F).

[14] *See* CEA section 2(a)(13)(D).

the parties to the transactions.'' [15] In response, the Commission proposed in § 43.4(e)(1) to prohibit the public dissemination of swap transaction and pricing information which identifies or otherwise facilitates the identification of a party to a swap. This section further provided that an SDR may not report such data in a manner that discloses or otherwise facilitates the identification of a party to a swap. The Commission recognized that the latter prohibition may result in a loss of clarity with respect to the precise characteristics of swaps in certain circumstances, and required in proposed § 43.4(e)(2) that a reporting party or a swap market [16] provide the real-time disseminator with a specific description of the underlying asset and tenor of a swap that is general enough to provide anonymity but specific enough to permit a meaningful understanding of the swap. For certain off-facility swaps—particularly ''other commodity'' swaps that have underlying assets with specific delivery or pricing points—market participants may be able to infer the identity of a party or swap counterparties based on the description of an underlying asset. Accordingly, proposed § 43.4(e)(2) was intended to permit reporting parties of off-facility swaps to publicly disseminate a description of an underlying asset or tenor in a way that does not disclose a party to a swap but nonetheless provides a meaningful understanding of the swap for purposes of enhancing price discovery.[17]

In proposing § 43.4(e), the Commission recognized that SEFs and DCMs may differ and that new types of swaps may emerge. For that reason, the Commission did not propose specific guidelines for describing an underlying asset for the purposes of this rule. Because the specificity of the description would vary based on particular markets and contracts, the proposed rules were intended to provide reporting parties with discretion in reporting swap transaction and pricing data. Proposed § 43.4(e)(2) and proposed part 23 of the Commission's regulations [18] would require SDs and MSPs who do not specifically describe an underlying asset and/or tenor because such disclosure would facilitate the identification of a counterparty, to document why the specific information was not publicly disseminated.

The Commission anticipated that unique product identifiers may develop for various swap products in various markets. Proposed § 43.4(f) provided that if a unique product identifier is developed that sufficiently describes the information in one or more of the data fields for public dissemination, consistent with appendix A to proposed part 43, the unique product identifier may be used in lieu of such data fields. Absent a unique product identifier, the publicly disseminated swap transaction and pricing data must contain all of the appropriate product identification fields in appendix A to proposed part 43.

As proposed, § 43.4(g) required public dissemination of any swap-specific event [19] that occurs during the life of a swap and affects the price of the swap (a ''price forming continuation event''). Proposed §§ 43.4(h) and (i) would govern public reporting of the notional or principal amount for all swaps. As proposed, these rules would require (i) a reporting party to transmit to a SEF or DCM the actual notional or principal size of any swap (including large notional swaps) or any block trade; and (ii) a SEF or DCM to transmit to a real-time disseminator the actual notional or principal size for all swaps executed on or pursuant to its rules. Section 43.4(j) proposed a rounding convention for notional or principal size and provided that the rounding should be applied at the point of public dissemination.

3. Proposed § 43.5—Block Trades and Large Notional Swaps for Particular Markets and Transactions

CEA sections 2(a)(13)(E)(ii) and (iii) require the Commission to prescribe rules ''to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts'' and ''to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public,'' with respect to swaps subject to the clearing mandate (including swaps that are excepted from the clearing mandate pursuant to CEA section 2(h)(7)) and those swaps that are not subject to the clearing mandate but are cleared. Similar provisions are not explicitly required for uncleared swaps, however, the Commission is authorized pursuant to its authority under CEA section 2(a)(13)(B) to prescribe similar rules for uncleared swaps described in CEA sections 2(a)(13)(C)(iii) and (iv). Proposed § 43.5 established: (1) The procedures for determining the appropriate minimum sizes for block trades and large notional swaps; and (2) the appropriate time delays for the reporting of block trades and large notional swaps. In describing the proposed block trade rules, the Commission noted that it would continue to analyze and study the effects of increased transparency on post-trade liquidity in the context of block trades and large notional swaps.[20] The Commission anticipated that new data would continue to inform this discussion and could cause subsequent revision of the Proposing Release.

As noted, CEA section 2(a)(13)(A) requires that all parties to swap transactions, including parties to block trades and large notional swaps, report data relating to swap transactions ''as soon as technologically practicable after the time at which the swap transaction has been executed.'' The Dodd-Frank Act also requires that the Commission promulgate rules ''to specify the appropriate time delay for reporting large notional swaps transactions (block trades) to the public.'' [21] In writing such rules, the Commission is charged to ''take into account whether public disclosure will materially reduce market

[15] 156 Cong. Rec. S5921 (daily ed. July 15, 2010) (Statement of Sen. Blanche Lincoln).

[16] The term ''swap market'' was defined in proposed § 43.2(z) as ''any registered swap execution facility or registered designated contract market that makes swaps available for trading.'' As discussed below, the Commission is not adopting the term ''swap market'' and is, for clarity, changing such references to ''registered swap execution facility or designated contract market.''

[17] The Commission described a hypothetical example in which the underlying asset to an off-facility swap that has a specific delivery point at Lake Charles, Louisiana—a contract commonly known to be traded by only two companies. Disclosing the underlying asset to the public would effectively disclose that one of those two companies was entering into the trade. *See* Real-Time NPRM *supra* note 6, at 76150. Proposed § 43.4(e)(2) would enable the reporting party to use a broader geographic region in place of the specific delivery point.

[18] The Commission issued proposed part 23 which was published in the **Federal Register** on November 23, 2010. 75 FR 71397. Proposed part 23 provided, inter alia, the business conduct standards for SDs and MSPs. Proposed § 23 establishes reporting, recordkeeping, and daily trading records requirements for SDs and MSPs. Specifically, § 23.201(d) provides that SDs and MSPs would be required to maintain records of information required to be reported on a real-time basis and records of information relating to large notional swaps in accordance with proposed part 43 and CEA section (2)(a)(13). When a less specific data field is reported in order to protect anonymity of participants to such swap, then the record must contain the rationale for reporting a less specific data field. The comment period for proposed part 23 closed on June 3, 2011; however the rule has not yet been adopted.

[19] Swap-specific events would include novations, swap unwinds, partial novations and partial swap unwinds.

[20] *See* 75 FR 76159 at note 67.

[21] CEA section 2(a)(13)(E)(iii). As noted above, the Commission is only required to prescribe rules relating to CEA section 2(a)(13)(E) for swaps subject to the mandatory clearing requirement (including those excepted from such requirement pursuant to CEA section 2(h)(7)) and swaps that are not subject to the mandatory clearing requirement but are cleared, as described in CEA sections 2(a)(13)(C)(i) and (ii).

liquidity.'' [22] The Commission recognized that the potential market impact of reporting a block trade or large notional swap is an important consideration in the determination of an appropriate time delay before public dissemination of block trade or large notional swap transaction and pricing data. Proposed § 43.5(k) specified the appropriate time delays for public dissemination of block trades and large notional swaps and established that the time delay for public dissemination begins at execution of the swap.

4. Proposed Appendix A to Part 43

The Commission anticipated that real-time swap transaction and pricing data may be publicly disseminated by multiple real-time disseminators in the same asset class. In order to minimize the effects of fragmentation and enhance consistency both within and among asset classes, the Commission proposed in appendix A to part 43 a number of data fields that should be publicly disseminated and provided guidance on the format and manner of reporting. The Commission believes that the public dissemination of standardized data should reduce the search costs to the public and market participants while increasing consolidation of real-time swap transaction and pricing data and promoting post-trade transparency and price discovery.

C. Overview of Comments Received [23]

The Commission received comments from 88 interested parties [24] representing a cross-section of the global financial services industry, including trade associations for both financial and non-financial end-users, potential SDs and MSPs; law firms representing diverse interests; exchanges; and numerous service and technology providers.[25] While many commenters expressed general support for the proposed part 43 rules, they also offered recommendations for clarification or modification of specific proposed regulations. Other commenters objected to particular aspects of the Proposing Release.

In addition to a general solicitation for comment on all aspects of the Proposing Release, the Commission requested comment on a number of specific, focused questions related to particular provisions. For example, commenters were asked to address issues related to (i) the appropriate implementation schedule for the final rules; (ii) which swap counterparties should be covered by the reporting requirements of part 43 in order to enhance price discovery; (iii) the responsibilities of the swap counterparties to report swap transaction and pricing data (including the advisability of establishing maximum timeframes in which reporting parties must report data to an SDR); (iv) whether the final rules should address the reporting and public dissemination of swap transaction and pricing data for swaps transacted between two non-U.S. persons; (v) the circumstances under which SEFs and DCMs are deemed to have satisfied their public dissemination requirements; (vi) recordkeeping and retention requirements, including the anticipated costs associated with storing real-time swap transaction and pricing data for an extended period of time; (vii) protection of the anonymity of swap counterparties (including the utility of rounding notional amounts); (viii) the utility of the proposed data fields (including whether dissemination of additional data fields would enhance transparency and price discovery); and (ix) whether there would be an adverse price impact for traders and/or an impact on liquidity if all market participants knew the swap transaction and pricing details of all swaps in real-time.

As noted, the SEC is separately authorized by section 763 of the Dodd-Frank Act to adopt real-time reporting rules for security-based swaps (''SBSs''). Because the Commission and the SEC regulate different products and markets and thus may have proposed differing regulatory requirements, the Commission particularly requested comments on the impact of any differences between the two regulatory approaches.

The Commission also requested comment with respect to its cost-benefit considerations generally, and specifically asked whether there are alternative ways it can meet its mandate under section 727 of the Dodd-Frank Act in a less costly manner. Similarly, commenters were invited to submit data or other information quantifying or qualifying the costs and benefits of the Proposing Release.

The comments received will be addressed as appropriate throughout the following discussion of the final rules.

D. Proposed § 43.5—Block Trades and Large Notional Swaps

Several commenters urged that the Commission study additional data before setting appropriate minimum block sizes and time delays [26] for public dissemination of block trades and large notional off-facility swaps.[27] The Commission recognized the merit in those concerns, and subsequent to publication of the proposed part 43 rules, it continued to receive and analyze swap data for various asset classes in order to make informed decisions with respect to the appropriate criteria for determining block trade sizes and the initial appropriate minimum block trade sizes. The Commission agrees with the commenters that additional analysis is necessary prior to issuance of final rules for appropriate minimum block sizes, and accordingly has determined not to make final its proposed § 43.5 rules specifying the criteria for determining block trade sizes. Instead, the Commission intends to issue a separate notice of proposed rulemaking that will specifically address the appropriate criteria for determining appropriate minimum block trade sizes in light of data and comments received.[28] Comments on these issues received in connection with the instant rulemaking will be considered by the Commission in its re-proposal of the block trade rules.

II. Part 43 of the Commission's Regulations—Final Rules

As proposed in the Real-Time NPRM, the provisions of part 43 governed the

[22] CEA section 2(a)(13)(E)(iv). As noted above, the Commission is only required to prescribe rules relating to CEA section 2(a)(13)(E) for swaps subject to the mandatory clearing requirement (including those excepted from such requirement pursuant to CEA section 2(h)(7)) and swaps that are not subject to the mandatory clearing requirement but are cleared, as described in CEA sections 2(a)(13)(C)(i) and (ii).

[23] In addition to the comments specifically discussed herein, the Commission also received comments from various groups during the course of external meetings. Those commenters include, among others: Rabobank Nederland, Insurance Groups (American Counsel of Life Insurers, Genworth, Manulife, John Hancock Life, New York Life, Northwestern Mutual, Prudential, MetLife and Allstate Life); Fidelity Investments; and Vanguard.

[24] The initial comment period with respect to proposed part 43 closed on February 7, 2011. The comment periods for most proposed rulemakings implementing the Dodd-Frank Act—including the proposed part 43 rules—subsequently were reopened for the period of April 27 through June 2, 2011.

[25] A complete list of the full names and abbreviations of commenters is included in section VII at the end of this release; comment letters are available through the Commission Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=919.*

[26] Commenters included: MFA; Barclays; AII; GS; UBS; GFXD; Freddie Mac; ISDA/SIFMA; Better Markets; ABC/CIEBA; SIFMA AMG; WMBAA; FHLBanks; Coalition for Derivatives End-Users; Cleary; and Vanguard.

[27] In light of clarifications in § 43.2, the terms ''large notional swap'' and ''large notional off-facility swap'' will be used interchangeably throughout this Adopting Release. *See infra* note 29.

[28] The notice of proposed rulemaking regarding block trade sizes and criteria is referenced throughout this release as the ''block trade re-proposal'' or ''re-proposal of the block trade rules.''

method and timing of real-time public reporting; swap transaction and pricing data to be publicly disseminated in real-time; and time delays for public dissemination of swap transaction and pricing data. The purpose, scope and rules of construction of part 43 were established in proposed § 43.1; proposed definitions of terms and processes relevant to real-time public reporting were specified in proposed § 43.2. Proposed § 43.3 established the method and timing for real-time public reporting and dissemination of swap transaction and pricing data; this rule also delineated the responsibilities of swap counterparties and SDRs, and established procedures for recordkeeping, correction of errors and omissions, and hours of operation. Proposed § 43.4 specified the format in which swap transaction and pricing data would be publicly disseminated and appendix A to proposed part 43 described the fields for which an SDR must publicly disseminate swap transaction and pricing data. As proposed, § 43.5 prescribed the criteria for determining what constitutes a large notional swap transaction (block trade) and specified the appropriate time delay for reporting block trades to the public.

While the Commission has adopted the part 43 rules substantially as proposed, there are several salient changes.[29] As noted above, the Commission is not adopting those elements of proposed § 43.5 relating to the establishment of block trade sizes. The Commission believes, in accordance with comments, that further study and analysis of block trade data is necessary prior to establishing minimum block trade size and for that reason has determined to make final only those elements of proposed § 43.5 relating to timestamp requirements and time delays for the public dissemination of swap transaction and pricing data. In that regard, § 43.5 provides that until the Commission establishes an appropriate minimum block size for a swap or group of swaps, the time delays specified therein will apply to all swaps that do not have an appropriate minimum block size. The anonymity provisions in § 43.4 have been clarified, and the Commission has eliminated a provision in proposed § 43.3 which would have permitted dissemination of swap transaction and pricing data by third-party service providers. Instead, the Commission will require that all public dissemination of such data occur through an SDR. Unless otherwise discussed in this section, the regulations are adopted as proposed.

A. Section 43.1—Purpose, Scope and Rules of Construction

Proposed § 43.1 applied to all swaps as defined in CEA section 1a(47) and as may be further defined by Commission regulation. The provisions of part 43 also applied to the categories of swaps set forth in CEA section 2(a)(13)(C); those categories account for the universe of swaps subject to the Dodd-Frank Act's regulatory regime, whether cleared or uncleared, and regardless of whether executed on a SEF, DCM or off-facility. The proposed rules applied real-time reporting requirements to SEFs, DCMs, SDRs and the swap counterparties, including registered or exempt SDs, registered or exempt MSPs and U.S.-based end-users. The Commission requested comment generally on the scope of transactions covered by this part, and specifically with respect to which swap counterparties should be subject to the reporting requirements of this part.

1. Scope—Generally

Proposed § 43.1(a) stated that the purpose of part 43 related to ''the collection and public dissemination of certain swap transaction and pricing data to enhance transparency and price discovery.'' [30] As proposed, § 43.1(b)(1) stated that the provisions of part 43 applied to all swaps as defined in CEA section 1(a)(47) and any implementing regulations therefrom, including the categories of swaps set forth in section 2(a)(13)(C) of the Act.[31] Further, proposed § 43.1(b)(2) provided that the provisions of part 43 apply to all SEFs, DCMs, SDRs and swap counterparties (including registered or exempt SDs, registered or exempt MSPs and U.S.-based end-users). Proposed § 43.1(c) specified the rules of construction for part 43, and explained that although the examples in part 43 and the related appendices are not exclusive, compliance with an example would constitute compliance with such portions of the rule to which the example relates.

Forty-six commenters addressed various aspects of the scope provisions.[32] Commenters expressed concerns related to swaps between affiliates, portfolio compression exercises,[33] uncleared and bespoke [34] swaps, end-user to end-user swaps, foreign exchange swaps, international issues, distress scenarios and other scope-related issues.[35]

[29] This adopting release is referred to herein as the ''Adopting Release.''

[30] CEA section 2(a)(13)(B) provides that the purpose of section 727 of the Dodd-Frank Act is ''to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.''

[31] CEA section 2(a)(13)(C) provides that ''[t]he Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data'' for four categories of swaps: (1) Swaps subject to the mandatory clearing requirement described in CEA section 2(h)(1) (including those swaps that are excepted from the requirement pursuant to CEA section 2(h)(7)); (2) swaps that are not subject to the mandatory clearing requirement described in CEA section 2(h)(1), but are cleared at a registered DCO; (3) swaps that are not cleared at a registered DCO and are reported to an SDR under CEA section 2(h)(6) (reporting for this category of swaps must be done in a manner that does not disclose the business transactions and market positions of any person); and (4) swaps that are determined to be required to be cleared under CEA section 2(h)(2) but are not cleared.

[32] *See supra* note 23.

[33] A separate proposed rulemaking under part 23 addresses rules relating to portfolio compression. 75 FR 81519 (Dec. 18, 2010).

[34] As used throughout this Adopting Release, ''bespoke'' indicates that a swap is off-facility and is not standardized.

[35] In addition, one commenter stated that the reporting and disclosure requirements could violate the First and Fifth Amendments to the United States Constitution by purportedly compelling ''non-commercial speech'' without satisfying a heightened standard and by ''taking'' protected private information without just compensation. *See* CL–Sadis and Goldberg. The Commission has carefully considered these comments and pertinent judicial precedent. It believes that the data reporting and disclosure requirements at issue would not violate the First Amendment because, among other reasons, the information at issue is commercial speech subject to a lower, reasonably-related standard. *See, e.g., Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio,* 471 U.S. 626, 650–53 (1985) (state bar did not violate First Amendment by requiring attorneys to fully disclose fee and cost arrangements in advertisements; the speech was commercial because it pertained to the economic interests of the parties, applicable standard was therefore whether the disclosure requirement was reasonably related to legitimate state interest, and the disclosure requirement at issue was rationally related to the state's interest in preventing deception of consumers). The Commission also believes that the requirements at issue would not violate the Fifth Amendment. Among other reasons, participants have no reasonable investment-backed expectation that information they submit will be kept confidential because they voluntarily submit it, knowing that it will be publicly disclosed to the extent provided by statute and regulation. In addition, the reporting and disclosure requirements are reasonably related to the government's legitimate interests in transparency and price discovery. *See, e.g., Ruckelshaus* v. *Monsanto,* 467 U.S. 986, 1006–07 (1984) (determining that there was no regulatory taking where applicant for pesticide registration was required by federal pesticide law to submit certain trade secret product data to EPA that EPA could then publicly disclose; applicant knew at time of submission that statute authorized EPA to do so, applicant therefore could not have had a ''reasonable investment-backed expectation'' that data would be kept confidential, and the government's action was reasonably related to legitimate government interest in an area of public concern and regulation).

2. Swaps Between Affiliates and Portfolio Compression Exercises

Several commenters questioned whether swaps between affiliates should be subject to the real-time public reporting requirements of part 43. Some commenters stated that swaps between affiliates have no price discovery or transparency value and thus should not be publicly reported.[36] One commenter noted that the real time dissemination of anonymous data regarding swaps between affiliates that price credit and market risk at or near zero might distort price discovery, rather than enhance it.[37] Other commenters stated variously that inter-affiliate trades and portfolio management exercises should not be considered ''reportable transactions,''[38] and that reporting swaps between affiliates will add reporting requirements to end-users.[39] A commenter noted the reporting of data on physical gas and power transactions between affiliates is excluded in other contexts.[40] Another argued that the public reporting of inter-affiliate transactions could seriously interfere with the internal risk management practices of a corporate group, thereby prompting market participants to act in a way that would prevent the corporate group from following through with its risk management strategy. This commenter suggested that such a result could raise the costs to corporate groups of managing risk internally, in addition to confusing market participants with irrelevant information.[41]

The Commission agrees with the comments regarding the public dissemination of certain swaps between affiliates and portfolio compression exercises. The Commission concurs that publicly disseminating swap transaction and pricing data related to certain swaps between affiliates would not enhance price discovery, as such swap transaction and pricing data would already have been publicly disseminated in the form of the related market-facing swap. This information may create an inaccurate appearance of market depth. Notably, there is a very high volume of swaps between affiliates in certain asset classes (*e.g.,* foreign exchange).[42] To require public dissemination of all such transactions could be very costly for market participants. Where there are no price discovery benefits to publicly disseminating such transactions, the Commission has determined not to require the public dissemination of these transactions at this time.

Accordingly, the Commission is adopting a definition in § 43.2 for the term ''publicly reportable swap transaction'' that does not presently require the public dissemination of internal swaps.[43] Specifically, a publicly reportable swap transaction means, among other things, any executed swap that is an arm's length transaction between two parties that results in a corresponding change in the market risk position between the two parties. As adopted, the definition of a publicly reportable swap transaction also provides, by way of example, that internal transactions to move risk between wholly-owned subsidiaries of the same parent, without having credit exposure to the other party[44] would not presently require public dissemination because such swaps are not arm's-length transactions.

Similarly, the Commission agrees that portfolio compression exercises should not be publicly disseminated at this time.[45] The purpose of such transactions is to mitigate risk between counterparties and any new swaps that were executed as a result of portfolio compression exercises would be a result of the compression itself and not an arm's-length transaction between the parties.[46] As adopted, the definition of a publicly reportable swap transaction also cites portfolio compression exercises as an example that does not presently require public dissemination.

3. Uncleared or Bespoke Swaps

The Commission received comments from various market participants relating to the scope of CEA section 2(a)(13) and proposed part 43, as it applies to uncleared and bespoke swaps. Some commenters stated that only standardized, cleared swaps should be real-time reported and publicly disseminated. Others urged that uncleared trades be treated differently than cleared trades and that the statute does not require that non-standardized swaps be real-time reported (*e.g.,* customized trades should receive a greater time prior to public dissemination).

A commenter argued that only uncleared swaps that perform a significant price discovery function should be publicly disseminated.[47] Another commenter argued that bespoke trade data has little value and public dissemination of such information involves complex technical issues.[48]

[36] *See, e.g.,* CL–Cleary; CL–FSR; CL–Working Group of Commercial Energy Firms; CL–Coalition of Energy End-Users; CL–ISDA/SIFMA; CL–Japanese Banks; and CL–Coalition for Derivatives End-Users.

[37] The commenter stated that ''default risk among affiliated entities within a corporate group is negligible,'' and ''an inter-affiliate swap does not price hedging costs the same as a market-facing swap because each inter-affiliate swap is entered into on the general assumption that the market risk of all transactions within the corporate group will be hedged by the centralized hedging affiliate under a market-facing transaction.'' CL–Shell at 6.

[38] *See* CL–TriOptima; CL–WMBAA.

[39] *See* CL–Coalition for Derivatives End-Users.

[40] *See* CL–Working Group of Commercial Energy Firms.

[41] *See* CL–Cleary.

[42] *See* CL–GFXD. ''Many millions of trades occur daily between different affiliates of the same institution which are not relevant to the institution's external market positioning.'' *Id.* at p. 13.

[43] As discussed and referenced in this rule, internal swaps between one-hundred percent owned subsidiaries of the same parent entity may include back-to-back swap transactions between or among such wholly-owned subsidiaries to help manage the risks associated with a market-facing swap transaction. In general, a back-to-back swap transaction effectively transfers the risks associated with a market-facing swap transaction to an affiliate that was not an original party to such transaction.

Back-to-back swap transactions may occur in a number of different ways. For example, an affiliate immediately may enter into a mirror swap transaction with its affiliate on the same terms as the marketing-facing swap transaction. By way of further example, a market-facing affiliate may enter into multiple transactions with affiliates that are not at arm's-length in order to transfer the risks associated with an arm's-length, market-facing transaction.

[44] Section 608 of the Dodd-Frank Act adds to paragraph 7 of the definition of ''covered transaction'' in Section 23A of the Federal Reserve Act (12 U.S.C. 371(c)): ''(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate, to the extent that the transaction causes a member bank or a subsidiary to have credit exposure to the affiliate.'' Hence, all derivatives transactions will be subjected to Section 23A of the Federal Reserve Act to the extent that they cause the bank to have credit exposure to the affiliate. Section 23B of the Federal Reserve Act contains an arm's-length requirement stating that a member bank and its subsidiaries may engage in any covered transaction with an affiliate only ''(A) on terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such bank or its subsidiary, as those prevailing at the time for comparable transactions with or involving other nonaffiliated companies, or (B) in the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.'' The Commission considers any covered transaction between affiliates as described in Sections 23A and 23B of the Federal Reserve Act to be publicly reportable swap transactions.

[45] In its proposed part 23 release relating to ''Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants,'' portfolio compression is defined as ''a mechanism whereby substantially similar transactions among two or more counterparties are terminated and replaced with a smaller number of transactions of decreased notional value in an effort to reduce the risk, cost, and inefficiency of maintaining unnecessary transactions on the counterparties' books.'' 75 FR 81532.

[46] *See* CL–TriOptima; CL–Shell.

[47] The commenter recommended that the Commission utilize a process to identify swaps that perform a ''significant price discovery'' function. *See* CL–Dominion.

[48] *See* CL–TriOptima.

Still another commenter explained that the public dissemination of swap transaction and pricing data should be phased in based on liquidity.[49] In contrast, two commenters said that the real-time reporting requirements should apply to all swaps, both standard and bespoke.[50]

Several commenters asserted that bespoke or customized swap transactions are not subject to real-time reporting, citing a perceived absence of authority under CEA section 2(a)(13)(C)(iii) to include these transactions. Others commented that bespoke transactions should not be subjected to real-time public reporting obligations because the transactions do not enhance price discovery and may compromise anonymity of the parties to the swap.

Some commenters focused on perceived burdens to end-users inherent in the proposed rules; many stated that end-users should not be required to report swaps.[51] Additionally, certain commenters stated that end-users do not have sufficient technology to report swaps; one commenter stated that end-user to end-user swaps should have next business day reporting.[52] Others contended that end-users should be treated differently because the public dissemination of swaps information involving such parties does not enhance price discovery.[53] Two commenters questioned the value of disclosing information relating to end-user to end-user power swaps compared to the harm that disclosing such information would have to these end-users and the public in general.[54]

The Commission interprets CEA section 2(a)(13)(C) to grant the Commission the authority to require the real-time public reporting of all swaps in order enhance price discovery.[55] Accordingly, the Commission does not believe that the transactions described above (*e.g.,* bespoke, end-user to end-user, etc.) should be excluded from real-time reporting obligations. Such swap transactions, unlike internal swaps between affiliates and portfolio compression exercises, are executed at arm's length and result in a change in market risk between the swap counterparties. Thus, the Commission believes that the public dissemination of these transactions will provide price discovery benefits and transparency to the swap markets.

However, the Commission agrees with commenters that the real-time public dissemination of swap transaction and pricing data should be phased in with longer initial time delays for public dissemination, as well as phased in compliance dates, for different asset classes and market participants within an asset class. Phasing in real-time reporting for certain transactions by allowing for longer initial time delays and phased compliance dates addresses concerns regarding bespoke transactions, including market liquidity and the ability for parties to report transactions. In particular, phasing in the public dissemination of bespoke transactions will allow the Commission to ensure that the public dissemination of such transactions will protect the identities of swap participants, not disclose the business transactions and market positions of any person involved in an uncleared swap and mitigate any adverse impact on market liquidity.

4. Foreign Exchange (''FX'') Asset Class

Several commenters sought clarification as to which FX swaps will be subject to the real-time public reporting requirements; some argued that FX forwards and swaps should not be subject to real-time public reporting rules. One commenter argued that the universe of FX market participants is massive given that FX transactions are an integral part of the global payment systems, presenting a practical challenge to ensuring that all relevant reporting participants are able to report.

To the extent that FX swaps or forwards, or both, are excluded from the definition of ''swap'' pursuant to a determination by United States Department of the Treasury (''Treasury''), the requirements of CEA section 2(a)(13) would not apply to those transactions, and such transactions shall not be subject to the real-time public reporting requirements of part 43. Treasury issued a proposed determination on April 29, 2011, in which it stated that FX swaps and forwards that would be excluded from the definition of ''swap,'' and thereby exempt from certain requirements established in the Dodd-Frank Act, including registration and clearing. However, the CEA provides that, even if Treasury determines that FX swaps and forwards may be excluded from the definition of ''swap,'' these transactions are not excluded from regulatory reporting requirements to an SDR.[56] Nonetheless, such transactions would not be subject to the real-time reporting requirements under part 43. Treasury has proposed to act pursuant to the authority in Section 721 of the Dodd-Frank Act that permits a determination that certain FX swaps and forwards should not be regulated as swaps and are not structured to evade the Dodd-Frank Act. The Commission has noted that, as proposed, Treasury's determination would exclude FX swaps and forwards, as defined in CEA section 1a, but would not apply to FX options or non-deliverable forwards (''NDFs'').[57] FX instruments that are not covered by Treasury's final determination would still be subject to the real-time public reporting rules described in part 43.[58]

Section 43.1 as adopted does not distinguish between transactions within the FX asset class; such a decision to exclude FX forwards and swaps will be determined by Treasury pursuant to CEA section 1(a)(47).

5. Limitations and Special Accommodations

Several scope-related comments focused on very specific issues. Some commenters argued that novations should not be publicly reportable swap transactions. Another commenter asserted that the Commission has no statutory basis for requiring that post-swap events (*e.g.,* novations, amendments, terminations, etc.) be subject to part 43. This commenter stated that real-time reporting should be limited to trade execution and that lifecycle events should not be reported.[59]

The Commission agrees that to the extent that novations or other lifecycle events do not change the pricing of an initial execution of the swap they would not be considered publicly reportable swap transactions and therefore would not be publicly disseminated.[60] As two

[49] *See* CL–FINRA.

[50] *See* CL–IECA; CL–Better Markets.

[51] *See* CL–IPAA; CL–IECA; CL–COPE; CL–PCS Nitrogen Fertilizer; CL–Coalition of Energy End-Users; CL–NFPEEU; CL–API; and Meeting with EEI (Feb. 10, 2011).

[52] *See* CL–IPAA.

[53] *See* CL–COPE; CL–Coalition of Energy End-Users.

[54] *See* CL–Coalition of Energy End-Users; CL–NFPEEU.

[55] The Commission stated in in the Proposing Release that it interprets CEA section 2(a)(13)(C) to apply to all swap transactions. The Commission agrees with the overall concern expressed by commenters regarding the statutory duty to ensure confidentiality. CEA sections 2(a)(13)(C)(iii) and 2(a)(13)(E)(i) emphasize the importance of not identifying swap counterparties. As discussed more fully below, CEA section 2(a)(13)(C)(iii) explicitly directs the Commission to require that real-time public reporting of transactions occur in a manner that does not disclose a party's business transactions and market position.

[56] *See* CEA section 1(a)(47)(E).

[57] *See* 76 FR 29818, 29835–29837 (May 23, 2011) (proposed rulemaking issued jointly by Commission and SEC to further define, among others, the term ''swap'').

[58] *See* 76 FR 25774 (May 5, 2011). Treasury's proposed determination may also be found at *http://www.treasury.gov/initiatives/wsr/Documents/FX%20Swaps%20and%20Forwards%20NPD.pdf.*

[59] *See* CL–NFPEEU.

[60] *See* the definition of ''publicly reportable swap transaction'' in § 43.2.

commenters pointed out, the reporting of a novation that is just a change in ownership could lead to duplication in reporting and misrepresentative prices in the market.[61] As discussed more fully below, in the case of novations where there is no change in the pricing, the novations would not be publicly reportable swap transactions pursuant to § 43.2.

The Commission recognizes that there are certain swap contract amendments or other transactions that could enhance price discovery. Those transactions that have a price impact should be subject to the real-time reporting rules of part 43. If price-changing lifecycle events were not required to be publicly disseminated, swap counterparties could enter into a swap at one price and then immediately enter into an amendment to change a material term of the swap. The Commission is clarifying the definition of ''publicly reportable swap transaction'' to ensure that only those lifecycle or continuation events that have a price-changing impact should be publicly disseminated. Requiring such price-forming continuation data to be publicly disseminated eliminates the incentive for swap counterparties to enter into a swap followed by an amendment in order to disguise the price of a swap.

Commenters stated that illiquid markets should not be subject to real-time reporting.[62] The Commission believes that, consistent with CEA section 2(a)(13), such swaps generally are subject to the public dissemination requirements of part 43. Certain accommodations, however, have been made for such swaps in part 43, including longer initial time delays for public dissemination in final § 43.5.

One commenter stated that power markets should not be subject to real-time reporting.[63] The Commission acknowledges this commenter's concern; swaps in the power market are priced in reference to specific locations and thus present issues regarding the protection of the identities of the counterparties. To the extent that these are off-facility swaps, the Commission intends to propose to describe the form and manner for their reporting in its block trade re-proposal. As discussed more fully below, until such standards are adopted, such off-facility swaps would not be subject to the real-time public reporting requirements of part 43.

A few commenters argued that physical forwards should be expressly excluded from the real-time reporting requirements. Others contended that various types of swaps—including total return swaps, stand-alone options and structured transactions—should not be subject to the real-time reporting requirements of part 43 or should be given special accommodations. To the extent that any of these types of swaps are excluded from the definition of ''swap,'' such transactions are not subject to the real-time reporting requirements. Accordingly, the Commission does not intend to provide any specific exemption from part 43 at this time.

The Commission received two comments regarding special accommodations for real-time public reporting in distress scenarios and DCO default scenarios.[64] One commenter stated that special accommodations should be made for distress scenarios; the other stated that swaps in connection with a DCO's default management should not be reported. This commenter also provided language to address this situation in the final rule.

The Commission agrees that, depending on the circumstances, default and distress scenarios may warrant different reporting requirements. The Commission believes that distress and DCO default scenarios may be situations in which the Commission may exercise its authority to temporarily suspend real-time public reporting obligations under part 43. The Commission may address such emergency authority in a future Commission rulemaking. The Commission does not accept the recommendation that real-time reporting obligations be suspended automatically upon the occurrence of a distress scenario; in its view any suspension or delay of reporting should occur only upon a Commission determination. Further, the Commission believes that time delays described in § 43.5 will address some of the concerns expressed in these comments.

6. Liquidity

Some commenters asserted that real-time public reporting could cause a reduction of liquidity, particularly in already illiquid markets.[65] The Commission believes that the availability of previously-inaccessible swap pricing data in close to real-time will increase the competition among potential swap counterparties regarding the pricing of such swaps, and that such increased competition will be a central benefit of the real-time reporting rules. The enhanced transparency and reliability of transactional data provided by the real-time dissemination of swap transaction data can be expected to promote confidence in the fairness and integrity of swaps markets. Thus, the Commission anticipates that while a trade-off between liquidity and transparency may manifest itself in the beginning of the implementation period, the increased transparency ultimately should increase participation in the swaps markets.[66]

Another key benefit of real-time reporting of previously unavailable swap transaction and pricing data is enhanced price discovery. Broader access to information will be of particular value to buy-side participants and end-users. As one commenter noted, the ability to observe information about recent transactions and to seek customized trades offers potential benefits to end-users.[67] In this regard, the Commission disagrees with commenters who opined that transaction data about bespoke, bilateral swaps provides no price discovery information. On the contrary, such information helps to complete the picture of the swap market for all market participants, and would likely inform traders seeking to transact economically similar—although not identical—swaps.

As SDs and MSPs adapt to the real-time public reporting of swap transaction data, the Commission anticipates that these market participants, who typically are large and technologically sophisticated, will compete on price to attract end-users and other typically smaller, less-sophisticated market participants as swap counterparties. The Commission believes that its phase in approach to dissemination delays provided in § 43.5 of this rule will allow market participants time to adapt to the new procedures.

7. International Issues

The Commission received several comments addressing international

[61] *See* CL–Barclays; CL–Working Group of Commercial Energy Firms.

[62] *See* CL–Members of Congress; CL–MS. Additionally, one commenter suggested less frequent reporting for illiquid parts of the market. CL–Chesapeake.

[63] *See* CL–NFPEEU.

[64] *See* CL–Barclays; CL–LCH.Clearnet.

[65] *See, e.g.,* CL–Chesapeake; CL–Dominion; CL–MS; CL–ATA and Meeting with Barclays (January 24, 2011).

[66] The Commission believes that it has achieved the appropriate balance between transparency and liquidity. However, the Commission recognizes that certain market participants may disagree with the Commission and choose not to enter into certain types of swaps. The Commission believes that increased price transparency will attract additional liquidity providers based on confidence that their competitive pricing will better attract business.

[67] *See* CL–Reval.

concerns as they relate to the scope of the Proposing Release. Four commenters stated that the Commission should explicitly require that only data relating to swap transactions involving at least one U.S.-person must be reported and publicly disseminated.[68] Seven comments urged that the Commission consult with foreign regulators before establishing extraterritoriality scope;[69] one comment stated that jurisdictional boundaries should be defined[70] and seven comments stated that any SD or MSP in a swap should be the reporting party regardless of whether it is a U.S. person.[71] Additionally, the Public Roundtable on Dodd-Frank Implementation produced comments regarding the need for the CFTC and SEC to harmonize their reporting requirements with international regulators.[72]

Two commenters questioned whether the Commission has the legal authority to implement proposed § 43.1(b)(2) with respect to non-U.S. parties[73] and suggested the Commission reach agreements with foreign regulators before requiring that all transactions with any U.S. person be subject to the requirements in part 43.[74]

The Commission recognizes the benefits of consultation with international regulators in developing the real-time public reporting rules set forth in part 43 of the Commission's regulations. To that end, Commission staff has had discussions with a number of international regulators, including the UK FSA, AEuropean Commission (''EC''),[75] European Parliament Rapporteur for the Regulation on OTC Derivatives, Central Counterparties and Trade Repositories, European Securities and Markets Authority (''ESMA''), Canadian Provincial Regulators and Japan FSA.[76] Commission staff continues to discuss with international regulators issues related to extraterritoriality.

Several commenters stated that an SD or MSP should be the reporting party regardless of whether it is a U.S. person. The Commission generally agrees that if a registered SD or MSP is a party to a publicly reportable swap transaction, it should be the reporting party, to the extent that such transaction is subject to real-time reporting. The Commission understands the need for flexibility where one party to a swap is a U.S. counterparty and the other is a foreign counterparty. Accordingly, as discussed in greater detail below, the Commission is adopting language in § 43.3(a)(3) that allows parties to a publicly reportable swap transaction involving an off-facility swap to mutually agree on the reporting party for such transaction; such agreement would be a term of the swap.

8. Final Rule Text of § 43.1

After consideration of comments relating to the purpose, scope and rules of construction in proposed § 43.1, the Commission is adopting § 43.1 substantially as proposed, with some clarifying changes responsive to commenters' concerns relating to the extraterritorial scope of part 43. Additionally, as discussed below, the Commission is adopting other provisions, including a revised definition of ''publicly reportable swap transaction'' that responds to many commenters' concerns.

The Commission is adopting § 43.1(a) as proposed, with technical and clarifying changes including (i) changing the words ''set forth'' to ''implements;'' (ii) changing the word ''collection'' to ''reporting;'' and (iii) the addition of a reference to the Dodd-Frank Act. The Commission is adopting § 43.1(b) with technical and clarifying changes relating to numbering and word changes as well as with a change to the last sentence. The last sentence of § 43.1(b), as adopted, states that ''[t]his part shall apply to registered entities as defined in the Act, as well as to parties to a swap including SDs, MSPs and U.S.-based market participants in a manner as the Commission may determine.'' The change to the last sentence of § 43.1(b) deletes the references to ''registered or exempt'' when referring to SDs and adds the clause ''in a manner as the Commission may determine'' as compared to proposed § 43.1(b). Finally, § 43.1(c) is being adopted with two clarifying changes: ''constitute'' is changed to ''shall constitute;'' and ''such'' is changed to ''the particular.''

B. Section 43.2—Definitions

As proposed, § 43.2 specified definitions for a number of terms and concepts related to real-time public reporting of swap transaction and pricing data. In response, the Commission received comments from 20 interested parties, including industry associations representing myriad financial market participants, potential SDs, an asset manager, potential SDRs and a DCM. In addition to comments on the definitions proposed in § 43.2, commenters addressed terms not defined in proposed § 43.2, such as ''illiquid market.''

1. Harmonization

A number of commenters suggested that the Commission and the SEC harmonize the use of the defined terms in proposed § 43.2 in order to foster operational efficiency, lessen the incidence of errors and place fewer burdens on reporting agencies.[77] The Commission agrees that harmonization of certain terms is desirable and the two agencies have coordinated their responses to the Dodd-Frank Act as closely as possible. The Commission notes that the two agencies have jurisdiction over different types of swaps which necessitates some differences in terminology. The Commission believes therefore that any differences between the two commissions with respect to defined terms are justified and necessary to accomplish the purposes of the Act.

[68] *See* CL–ISDA/SIFMA; CL–GFXD; CL–Foreign Headquartered Banks; and CL–Working Group of Commercial Energy Firms.

[69] *See* CL–ISDA/SIFMA; CL–Commodity Markets Council; CL–Foreign Headquartered Banks; CL–WFE/IOMA; CL–Tradeweb; CL–SIFMA AMG; and CL–Soc Gen.

[70] *See* CL–ISDA/SIFMA.

[71] *See* CL–Vanguard; CL–MarkitSERV; CL–SIFMA AMG; CL–ICI; CL–ISDA/SIFMA; CL–BlackRock; and CL–DTCC.

[72] *See* CL–MarkitSERV; CL–AFGI; and CFTC/SEC Public Roundtable on International Issues Relating to Dodd-Frank (Aug. 1, 2011). Public Roundtable comments can be found at http://comments.cftc.gov/publiccomments/commentlist.aspx?id=1065.

[73] As proposed, § 43.1(b) established the scope of part 43. Proposed § 43.1(b)(2) provides that the part 43 rules apply to all SEFs, DCMs, SDRs, as well as parties to a swap including registered SDs, registered MSPs and U.S.-based end-users.

[74] *See* CL–ISDA/SIFMA; CL–GFXD.

[75] It should be noted that the 2004 version of Markets in Financial Instruments' Directive (''MiFID'') contained language for equities that ''Member States shall, at least, require regulated markets to make public the price, volume and time of the transactions executed in respect of shares admitted to trading. Member States shall require details of all such transactions to be made public, on a reasonable commercial basis and as close to real-time as possible.'' The European Commission published its MiFID and Markets in Financial Instruments Regulation (''MiFIR'') on October 20, 2011. The European Commission's legislative proposals require that regulated markets, multilateral trading facilities (''MTFs'') and organized trading facilities (''OTFs'') shall make public the price, volume and time of transaction executed for all derivatives admitted to trading or which are traded on an MTF or an OTF. These organized trading venues shall make this transaction data public as close to real-time as is technically possible. Investment firms that make public trades outside of trading venues must make those trades available through Approved Publication Arrangements which are regulated by MiFID.

[76] In addition, the Commission met with European industry representatives, including Credit Suisse, Deutsche Bank, Citi, J.P. Morgan, Barclays, Goldman Sachs and UBS (Mar. 22, 2011).

[77] *See* CL–GFXD; CL–ISDA/SIFMA; and CL–Vanguard.

2. Defined Terms

Section 43.2 contains the definitions for terms and concepts throughout part 43 and its related appendices.[78] The specific terms defined in § 43.2 are discussed below.

Act—Proposed § 43.2(a)

The Commission is adopting the definition as proposed with a clarifying citation to the United States Code.[79]

Affirmation—Proposed § 43.2(b)

A commenter suggested that the use of terms like ''affirmation'' should reflect long-standing market conventions that differ according to the type of underlying reference asset.[80] Another commenter pointed to a perceived loophole in the Commission's proposed definition that would allow for the avoidance of block trade reporting by agreeing on swap terms at one point in time and affirming terms of trade details later.[81] The Commission believes that the definition as proposed provided adequate clarity to permit flexibility for different market participants, asset classes and methods of execution. The Commission is not persuaded by the argument that the proposed definition contains a loophole that would allow for the avoidance of block trade reporting. The Commission believes that the business conduct and straight-through processing rules proposed in part 23 of its regulations,[82] in addition to anti-evasion requirements (proposed to be included in part 1 of its regulations), should provide adequate oversight rules.[83]

Comments emphasizing the need for harmonization between the CFTC and the SEC focused in part on the definition of ''affirmation.'' The SEC's proposed Regulation SBSR does not include the concept of ''affirmation''; however, the Commission believes that this difference is not material.

For the reasons discussed above, the Commission believes that the proposed definition of ''affirmation'' provides adequate clarity for different market participants, asset classes and methods of execution. Accordingly, the Commission is adopting the definition as proposed.

Appropriate Minimum Block Size—Proposed § 43.2(c)

The Commission is adopting the definition of ''appropriate minimum block size'' with a few modifications. As discussed below, since the definition of ''swap instrument'' is not being adopted in these final rules, the reference to that definition is removed.[84] The statement in the proposed definition regarding the calculation of appropriate minimum block sizes has been removed since those proposed rules are being reconsidered at this time.

As Soon as Technologically Practicable—Proposed § 43.2(d)

Proposed § 43.2(d) defined the term ''as soon as technologically practicable'' as ''as soon as possible, taking into consideration the prevalence of technology, implementation and use of technology by comparable market participants.'' The Commission anticipated that this term could have different interpretations for different swap counterparties (*i.e.,* SDs, MSPs and end-users), for different types of swaps (*e.g.,* energy swaps, credit default swaps, interest rate swaps, etc.) and for different methods of execution (*i.e.,* SEFs, DCMs and off-facility swaps).

The Commission received twelve comments from various interested parties, including trading platforms, industry groups/associations and a data vendor. One commenter[85] stated that while the SEC's proposed definition of ''real time'' more easily replicates current market practice than ''as soon as technologically practicable,'' the CFTC and SEC should propose one consistent definition of real-time reporting for their respective rules.

While the comments generally support the flexibility of the definition, some commenters requested further clarification. One commenter, for example, requested that the Commission distinguish between SDs that are banks and those that are non-banks.[86] Another commenter requested clarification whether ''as soon as technologically practicable'' would mean the same thing for swaps executed on or pursuant to the rules of a SEF or DCM as for swaps under CEA section 2(h)(7).[87]

Some commenters suggested that the Commission refrain from establishing maximum reporting time frames, except for large SDs and MSPs or, at a minimum, either adopt longer time frames for reporting for market participants that are not SDs or MSPs, or allow custom and market practice to eventually define the time period that is a responsible interpretation of ''technologically practicable.''[88] Other commenters addressed the concept of backstops for real-time reporting for non-block trades.[89] One stated that there must be a maximum time limit of no longer than five minutes,[90] while another said that maximum reporting timeframes should be given only for SDs and MSPs (or at a minimum reporting timeframes should be longer for end-users).[91] Another commenter contended that real-time reporting should occur after confirmation to reduce errors and omissions and since the confirmation process is what drives the booking of a trade into a firm's trade capture system.[92]

The Commission acknowledges that SDs and MSPs are more likely to have the infrastructure and resources available to report their swap transaction and pricing data to an SDR faster than other categories of market participants (*i.e.,* financial and non-financial end-users). However, the Commission believes it would be premature to establish maximum timeframes at this time without information on the manner and frequency in which these swaps are executed or a clear understanding of the technological capabilities of reporting parties. Declining to establish backstops is a less prescriptive approach that takes into account the different technological capabilities of different markets and market participants. The Commission can analyze timestamp data, which is not currently available, to determine whether reporting parties are reporting ''as soon as technologically practicable.''

In response to comments requesting further clarification of the definition, the Commission believes that the proposed definition provided adequate flexibility for different market participants, asset classes and methods of execution. If the definition of ''as

[78] Proposed § 43.2 used subparagraph lettering for the definitions; however, the Commission has removed the subparagraph lettering from final § 43.2 to enable the addition of defined terms as rules relating to block trades and large notional off-facility swaps are promulgated, without necessitating a renumbering with § 43.2.

[79] No comments were received in connection with the proposed definition for ''Act.''

[80] *See* CL–ISDA/SIFMA. As discussed below, this comment was broadly applied to terms such as ''execution'' and ''confirmation.''

[81] *See* Communication with Darrell Duffie (Dec. 15, 2010).

[82] *See supra* note 18.

[83] Proposed part 1 of the Commission's regulations provides that all transactions that are willfully structured to evade the requirements of the Dodd-Frank Act will be treated as swaps. *See* 76 FR 29818 at 29865–66 (May 23, 2011). The rule has not yet been adopted.

[84] No comments were received in connection with the language of the proposed definition for ''appropriate minimum block size.''

[85] *See* CL–Chris Barnard.

[86] *See* CL–Working Group of Commercial Energy Firms.

[87] *See* CL–Coalition for Derivatives End-Users.

[88] *Id.*

[89] *See* CL–Better Markets; CL–Markit; and CL–Coalition for Derivatives End-Users.

[90] *See* CL–Better Markets.

[91] *See* CL–Coalition for Derivatives End-users.

[92] *See* CL–DTCC.

soon as technologically practicable'' were more rigid (*e.g.,* setting forth maximum reporting times) the costs to less sophisticated reporting parties could be greater, particularly in the initial phases of the rule.[93]

With respect to comments regarding backstops, the Commission believes that there could be potentially significant costs to certain market participants—particularly end-users—in complying with a backstop. For this reason as well, the Commission has determined to retain the flexibility of the definition by excluding backstops. While the SEC's proposed Regulation SBSR provided a 15-minute backstop, it is important to note that the markets overseen by the SEC have significantly fewer end-users participating in the credit and equities markets than the markets under the Commission's authority. The Commission believes this distinction justifies the difference in approach between the agencies.

For the reasons discussed above, the Commission has retained a less prescriptive definition of ''as soon as technologically practicable'' in order to provide adequate flexibility for different market participants, asset classes and methods of execution, particularly when weighed against the potential costs to market participants to comply with more rigid timeframes. Accordingly, the Commission is adopting the definition as proposed.

Asset Class—Proposed § 43.2(e)

Proposed § 43.2(e) provided that the asset classes include five major categories: Interest rate, currency, credit, equity and ''other commodity,'' as well as any other asset class that may be determined by the Commission. Commenters offered various views with respect to categorizing the asset classes. One commenter recommended that relatively few defined asset classes would create increased aggregation of services and reduce the risks of duplication or omission in public dissemination or erroneous consolidation by the public of available data, while also reducing the burden on market participants to connect and reconcile among multiple SDRs.[94] ISDA and SIFMA jointly opined that providing sub-asset classes for ''other commodity'' would be advisable for reporting requirements.[95]

One commenter expressed concern with respect to the definition, treatment and reporting of an FX forward under the Proposing Release.[96] This commenter requested clarification that spot transactions with value dates less than or equal to T+2 [97] are excluded from the definition and further requested clarification with respect to the reporting obligations on those FX products that may be excluded by Treasury. Commenters also requested further clarification in defining an ''FX swap'' and ''cross currency swap.'' These commenters distinguished between a cross currency swap (an interest rate product with multi-payment schedules, traded by interest rate desks with interest rate market participants) and an FX swap (''FX products traded by distinct FX desks with different market participants using different internal and external systems infrastructure'').[98] In the commenters' opinion, cross-currency swaps should be reported in the interest rate asset class, while FX swaps should be reported in a separate FX asset class.

One commenter suggested that, with respect to FX instruments, market conventions are needed to determine whether (i) both legs of the transaction are reported by a single counterparty; or (ii) whether the transaction is instead reported separately as two legs by two counterparties with two separate trade identifications. Additionally, the commenter suggested that an FX sub-classification system should be categorized by an industry association sufficiently familiar with the FX market.[99]

One commenter recommended that the definition of ''asset class'' be harmonized with the SEC's definition to facilitate ease of tracking by market participants.[100] The Commission believes that references to the credit and equity asset classes should, to the extent possible, be defined consistently between the two agencies, but notes that the SEC will not be regulating products in asset classes other than credit and equity. Because the Commission is best situated to define the asset classes within its jurisdiction, it believes that any differences between the CFTC and the SEC with respect to the definition of ''asset class'' have their origins in different statutory and regulatory schemes and are justified and necessary.

The Commission is persuaded by the suggestions regarding the subdivision of asset classes and agrees that fewer asset classes will decrease fragmentation of data and reduce the burden of market participants to reconcile among multiple SDRs. Additionally, since an SDR that accepts swap transaction and pricing data for a swap within an asset class must accept data for all swaps in that asset class, market participants will more likely be able to report data for both real-time and regulatory reporting purposes.[101] The Commission also agrees that there is merit to providing a sub-class for the ''other commodity'' asset class. The ''other commodity'' asset class may be broken down into sub-asset classes for purposes of public dissemination;[102] however, the ''other commodity'' asset class remains an asset class that includes energy, metals, precious metals, agricultural commodities, weather, property and other commodities.

Finally, the Commission agrees that clarification and additional guidance is needed to address FX products.[103] Specifically, the Commission has determined to include cross-currency swaps in the interest rate asset class and FX options, swaps and forwards will be included in an FX asset class. Therefore, the Commission has modified the definition to better reflect the fact that the industry typically characterizes ''currency'' swaps as ''interest rate swaps.'' [104] Accordingly, the Commission is replacing the term ''currency'' in the definition of asset class with ''foreign exchange'' in § 43.2 to accurately reflect the asset classes employed by the swaps market.

As discussed above, to the extent that FX swaps or forwards, or both, are excluded from the definition of ''swap'' pursuant to a determination by Treasury, the requirements of CEA section 2(a)(13) would not apply to those transactions, and such transactions shall not be subject to the real-time reporting requirements of part 43. Under Treasury's proposed determination, while FX swaps and forwards would be excluded from the

[93] The Commission notes that real-time swap transaction and pricing data must be reported ''as soon as technologically practicable'' after ''execution'' which is linked to the ''affirmation'' of the swap. ''Confirmation'' of the swap may occur at a point after the affirmation and execution, or at the same time (*e.g.,* SEF or DCM execution of a swap).

[94] *See* CL–DTCC.

[95] *See* CL–ISDA/SIFMA.

[96] *See* CL–GFXD.

[97] The terms ''T+1'' and ''T+2'' refer to the transaction date plus one day or two days, respectively.

[98] *See* CL–GFXD.

[99] *Id.*

[100] *See* CL–Vanguard.

[101] *See* § 49.10(b). *See also* 76 FR 54538, 54579 (Sep. 1, 2011). Part 49 establishes the registration and compliance requirements for SDRs. *See also* § 43.3(c)(2).

[102] Accordingly, appendix A to part 43 provides a data field for public dissemination entitled ''sub-asset class for other commodity.''

[103] *See* CL–GFXD.

[104] This characterization is based on the attributes of currency swaps that resemble the structure and operation exhibited by interest rate swaps while in ''foreign exchange'' swaps, the underlying currencies are exchanged by the parties.

real-time reporting requirements of part 43, FX options and NDFs would not be excluded and would be subject to part 43's real-time reporting requirements.[105]

The Commission has determined to clarify the definition of ''asset class'' by changing the asset class from ''currency'' to ''foreign exchange.'' In addition, such change would place ''cross-currency swaps'' in the ''interest rate'' asset class. Finally, the Commission is making technical changes to the definition of ''asset class.'' For example, ''the broad category of goods, services or commodities'' is changed to ''a broad category of commodities, including, without limitation, any 'excluded commodity' as defined in Section 1a(19) of the Act, with common characteristics underlying a swap.'' [106]

Block Trade—Proposed § 43.2(f)

The Commission has determined to modify the proposed definition of ''block trade'' by making certain technical and conforming changes in light of other definitional changes and terminology usage throughout part 43.[107] The Commission clarified that a block trade involves a swap that is ''listed on a SEF or DCM'' and therefore deleted the phrase ''made available for trading.'' Such change ensures that block trades may be executed with respect to any listed contract. Additionally, the Commission clarified certain aspects of the definition, including changing the word ''off'' to ''away from'' to indicate that a block trade is executed away from the trading system or platform. The other revisions to the ''block trade'' definition provide clarification and reflect consistency with other changes to the final rule. As previously discussed, this rulemaking does not address issues related to the determination of appropriate minimum block sizes.

Business Day

The Commission has determined to add ''business day'' as a defined term to address the final time delay provisions in § 43.5. The Commission defined the term ''business day'' in § 43.2 as follows: ''Business day means the twenty-four hour day, on all days except Saturdays, Sundays and legal holidays in the location of the reporting party or registered entity reporting data for the swap.''

The Commission believes that defining business day as twenty-four hours is necessary given the global nature of the swaps market. The determination of the business day will be based on the time zone of the location of the reporting party, SEF or DCM. For example, if the reporting party is an SD located in London who enters into a swap with a U.S.-based entity, London time would be used to determine the business day.

Business Hours

The Commission did not receive comments suggesting a definition of ''business hour;'' however, it believes that the addition of such defined term is necessary to provide clarity with respect to the real-time reporting provisions in final § 43.5. The term ''business hours'' is defined in § 43.2 as follows: ''Business hours means the consecutive hours of one or more consecutive business days.''

Since ''business day'' is defined as the twenty-four hour day, ''business hours'' are consecutive hours during and across ''business days.'' For example if a publicly reportable swap transaction has a time delay of 24 business hours and it is executed at 6 a.m. EST on Friday, then such swap would be publicly disseminated at 6 a.m. EST on Monday, assuming that weekend days are not business days in the locale of the reporting party.

Confirmation—Proposed § 43.2(g)

One commenter stated that the definition of confirmation was appropriately broad.[108] With respect to the proposed requirement that a confirmation would legally supersede any previous agreement (electronic or otherwise), this commenter requested clarification or confirmation that this provision does not mean that a confirmation supersedes terms in the package of documentation that make up the ''agreement,'' unless the parties themselves so agree.[109] The commenter stated that this clarification is necessary because some fiduciaries of plans ensure that the terms of a swap are the best terms available from the perspective and interests of plan participants by having the lead fiduciary centralize the negotiation of the terms of the Schedule and Paragraph 13 of the ISDA Agreement.[110]

A commenter suggested that use of terms such as ''confirmation'' should reflect long-standing market conventions that differ according to the type of underlying reference asset.[111] Another commented similarly that the definition used for ''confirmation'' should reflect the underlying conventions that are prevalent in the FX market, which may be different to those used in other asset classes.[112]

The Commission agrees that clarification is necessary with respect to the proposed requirement that a confirmation would legally supersede any previous agreement (electronically or otherwise).[113] The Commission believes that adding the phrase ''relating to the swap'' following ''previous agreement'' provides sufficient clarity. Absent a requirement that the confirmation legally supersedes the previous agreement relating to the swap, transparency could be lost as key terms could be included in the schedule or credit support annex and conflict with terms later added to the confirmation. It is industry practice that the confirmation is the controlling document, and such confirmation will usually incorporate the schedule, master and any collateral arrangement(s) by reference.

With respect to the comment that ''confirmation'' should reflect long-standing market conventions that differ according to the type of underlying reference class, the Commission believes that the definition as proposed, with the modification as described above, provides adequate clarity to allow flexibility for different market participants, asset classes and methods of execution. Therefore, the Commission is adopting the definition of confirmation as proposed with some minor clarifications, including adding ''relating to the swap'' to the end of the definition to make clear that the agreement that would be legally superseded would have to relate to the same swap.

Confirmation by Affirmation—Proposed § 43.2(h)

This term is adopted as proposed, except for the deletion of the last

[105] *See* 76 FR 25774 at 25776. ''[U]nlike most derivatives, foreign exchange swaps and forwards have fixed payment obligations, are physically settled, and are predominantly short-term instruments.''

[106] The terms ''commodity'' and ''excluded commodity'' as used in the definition of ''asset class'' are defined in CEA sections 1a(9) and 1a(19) respectively.

[107] The Commission received no comments addressing its proposed definition of ''block trade.''

[108] *See* CL–ABC/CIEBA. *See supra* note 80.

[109] *Id.*

[110] The Schedule provides an opportunity for parties to a swap to negotiate terms of or add terms to the pre-printed ISDA Master Agreement. Paragraph 13 provides an opportunity for parties to a swap to negotiate the terms of or add terms to the Credit Support Annex (New York Agreement) for the OTC swap transaction.

[111] *See* CL–ISDA/SIFMA. This suggestion is part of a broader comment recommending that defined terms should follow market conventions.

[112] *See* CL–GFXD.

[113] *See* CL–ABC/CIEBA.

sentence of the proposed definition.[114] Upon further consideration, while it agrees with that statement, the Commission believes that this statement is not necessary and therefore should not be included in the definition.

Embedded Option—Proposed § 43.2(i)

This defined term is adopted as proposed with a minor clarification. The proposed definition stated that an embedded option was a right, but not an obligation, provided to one party of a swap by the other party ''to the same swap that provides the party in possession of the option * * *.'' The Commission is clarifying this language to provide that the ''party holding the option'' that has the ability to change any of the economic terms of the swap ''as those terms previously were established at confirmation (or were in effect on the start date).''

Executed—Proposed § 43.2(j)

The Commission is adopting this term as proposed.

Execution—Proposed 43.2(k)

Proposed § 43.2(k) defined ''execution'' as the agreement between parties to the terms of a swap that legally binds the parties to such terms under applicable law. An agreement may be in electronic form (*e.g.,* on a SEF or DCM or via instant message); oral (*e.g.,* telephonically); in writing (*e.g.,* a bespoke, structured transaction where documents are exchanged); or in some other format not contemplated at this time. Execution is simultaneous with or immediately follows the affirmation of the swap. The SEC does not define ''execution'' in its Proposed Regulation SBSR, but rather defines ''time of execution'' as the ''point at which the counterparties to an SBS become irrevocably bound under applicable law.'' [115] One commenter asserted that the use of terms such as ''execution'' should reflect long-standing market conventions that differ according to the type of underlying reference asset.[116] The commenter further stated that harmonization of these terms in the Commission's and SEC's rules for a particular product type will foster operational efficiency, lessen the incidence of errors, and place fewer burdens on reporting agencies. Another commenter stated that the definition used for ''execution'' should reflect the underlying conventions that are prevalent in the FX market, which may be different from those used in other asset classes.[117]

In response to the comments that ''execution'' should reflect long-standing market conventions that differ according to the type of underlying reference asset and underlying conventions in the FX market, the Commission believes that the definition as proposed provides adequate clarity to allow flexibility for different market participants, asset classes and methods of execution. Additionally, the definition is substantially similar to that in proposed Commission regulation § 23.500(d).[118]

However, in order to provide additional clarity with respect to the definition of ''execution,'' the Commission is modifying the last sentence of the proposed definition to read, ''Execution occurs simultaneous with or immediately following the affirmation of the swap.'' The Commission believes that swaps associated with structured transactions will, for the most part, be bespoke, or customized, transactions. These structured transactions will be identified as bespoke when publicly disseminated. Additionally, the Commission believes it is necessary to make clear that execution (*i.e.,* when a legally binding contract is formed) for certain structured transactions may not occur until the documents are signed and/or the deal is funded.

Large Notional Swap—Proposed § 43.2(l)

Although no comments were received in connection with the proposed definition, the Commission has determined to make certain technical and conforming changes consistent with other definitional changes and terminology throughout part 43: The term ''large notional swap'' is renamed ''large notional off-facility swap'' for added clarity. All references to ''large notional swap'' should be read interchangeably with the term ''large notional off-facility swap'' for the purposes of these part 43 rules. In addition, the Commission has made minor technical and conforming changes to the definition. Specifically, the definition is simplified to clarify that the term large notional off-facility swaps applies to all off-facility swaps with a notional or principal amount at or above the appropriate minimum block size that nevertheless are not block trades.

Minimum Block Trade Size—Proposed § 43.2(m)

The Commission is not adopting a definition for ''minimum block trade size'' at this time; the definition will be addressed in connection with the block trade re-proposal to be published for comment in the **Federal Register**.

Newly-Listed Swap—Proposed § 43.2(n)

The Commission is not adopting a definition for ''newly-listed swap'' in this final rulemaking; the definition will be addressed in connection with the block trade re-proposal to be published for comment in the **Federal Register**.

Novation—Proposed § 43.2(o)

The Commission is adopting the defined term ''novation'' as proposed with a minor, non-substantive clarification.

Off-Facility Swap—Proposed § 43.2(p)

One commenter contended that the definition of ''off-facility swaps'' unnecessarily complicate an already complex process and is not required by the Act.[119] The Commission disagrees: Terms and sufficiently detailed definitions assist readers to understand the rule, to adequately define complex products and to assist in describing the requirements for registered entities and market participants.

While there are no substantive changes to this definition, the Commission made minor technical and conforming changes by adding ''publicly'' before ''reportable swap transaction'' to conform with the change to the defined term.

Other Commodity—Proposed § 43.2(q)

Although the Commission did not receive comments addressing the definition of ''other commodity,'' it has determined to modify the definition to more appropriately reflect other revisions to proposed § 43.2. The proposed definition stated, ''Other commodity means any commodity that cannot be grouped in the credit, currency, equity or interest rate asset class categories.'' Section 43.2 defines ''other commodity'' as follows: ''Other commodity means any commodity that is not categorized in the other asset classes as may be determined by the Commission.''

[114] Proposed § 43.2(h) contained the sentence: ''With the affirmation by one party to the complete swap terms submitted by the other party, the swap is legally confirmed and a legally binding confirmation is consummated (*i.e.,* confirmation by affirmation).''

[115] *See* 75 FR 75211, n. 30 (Dec. 2, 2010).

[116] *See* CL–ISDA/SIFMA. *See supra* note 80.

[117] *See* CL–GFXD.

[118] ''Execution'' is defined in proposed § 23.500(d) to mean, with respect to a swap transaction, ''an agreement by the counterparties (whether orally, in writing, electronically, or otherwise) to the terms of the swap transaction that legally binds the counterparties to such terms under applicable law.'' *See* 75 FR 81519 at 81530.

[119] *See* CL–NFPEEU.

The phrase ''as may be determined by the Commission'' modifies the phrase ''other asset classes'' to adequately reflect the language in the definition of ''asset class.''

Public Dissemination and Publicly Disseminate—Proposed § 43.2(r)

The proposed definition of ''publicly disseminate'' states that data should be disseminated on a non-discriminatory basis. Commenters requested further clarification relating to the definition of ''publicly disseminate.'' One believed that the definition was too passive in describing how the data is delivered. Two commenters asked for clarification whether the data that is publicly disseminated is pre- or post-allocation.

The Commission clarifies that the swap transaction and pricing data that must be publicly disseminated is pre-allocation data. Accordingly, the notional or principal amount that would be publicly disseminated would be the pre-allocated amount.

The Commission disagrees that the definition of ''publicly disseminate'' is too passive in describing how the data are delivered. The Commission believes that ''publicly disseminate'' should mean making the data readily available in a non-discriminatory manner to those who wish to access it, rather than pushing out the data to market participants, data vendors, news media, etc.

In the Commission's view the proposed definition of ''publicly disseminate,'' is sufficiently clear. This definition is intended to convey that the data are available to all interested parties. The Commission believes that posting the swap transaction and pricing data on an Internet Web site and providing the Commission with a link to a conspicuous Internet Web site on which anyone can freely access the information is sufficient to satisfy the definition of publicly disseminate. The Commission expects to post these links on its Web site to provide market participants and the public with a central location to access such data.[120]

The Commission agrees with commenters that the term ''widely published'' should be clarified, and has defined ''widely published'' in § 43.2 to mean, ''to publish and make available through electronic means and in a manner that is freely available and readily accessible to the public.''

Real-Time Disseminator—Proposed § 43.2(s)

All real-time data must be sent to SDRs, and SDRs must ensure that such data is publicly disseminated. For this reason, the Commission has concluded that a separate definition of ''real-time disseminator'' could be confusing and is unnecessary. Accordingly, the Commission has determined not to adopt this defined term in § 43.2.

Real-Time Public Reporting—Proposed § 43.2(t)

The Commission is adopting this term as proposed.[121]

Remaining Party—Proposed § 43.2(u)

This Commission is adopting this term as proposed.[122]

Reportable Swap Transaction—Proposed § 43.2(v)

Proposed § 43.2(v) defined this term as ''any executed swap, novation, swap unwind, partial novation, partial swap unwind or such post-execution event that affects the price of a swap.'' The proposed definition included both the execution of a swap and certain price-affecting events that occur over the life of a swap. The Commission believes novations and swap unwinds are events that may affect the price of the swap and should be publicly disseminated in real-time, but only to the extent that they affect the pricing of the swap. In addition to novations and swap unwinds, other price-affecting events over the life of a swap may be considered ''reportable swap transactions.'' One commenter contended that the criteria for ''reportable swap transaction'' should exclude internal transactions between related or affiliated parties, such as back-to-back transactions between trading centers for the purpose of transferring the management of risk, where the pricing of the individual transaction could be influenced by group internal issues.[123] Another commenter stated that the reporting of lifecycle events should be limited to price-forming events. This commenter further suggested the inclusion of an unconditional requirement to report any information which could affect prices or pricing attributes during the life of a swap.[124]

The Commission recognizes commenters' concerns regarding the criteria for ''reportable swap transaction'' and also agrees that the reporting of lifecycle events should be limited to price-forming events. Accordingly, it is modifying the definition of ''reportable swap transaction'' in proposed § 43.2(v) to address these concerns. The defined term has been changed to ''publicly reportable swap transaction'' to make clear that the scope of the definition covers only those swaps and lifecycle events that are to be publicly disseminated pursuant to part 43, and not necessarily all of the swaps and lifecycle events that must be reported to SDRs for regulatory purposes. The Commission is limiting the scope of publicly reportable swap transactions to those executed swaps that are arm's-length and that result in a change in the market risk position between two parties. The Commission also is providing clarifying examples in the definition regarding executed swaps that need not be publicly disseminated because they are not arm's-length transactions between two parties, notwithstanding that they do result in a corresponding change in the market risk position between the two parties. The definition provides that such swaps include: (1) Internal swaps between one-hundred percent owned subsidiaries of the same parent entity; and (2) portfolio compression exercises.[125]

The Commission's definition of publicly reportable swap transaction does not include swaps that are not executed at arm's-length. These transactions do not serve the price discovery objective of CEA section 2(a)(13)(B). Moreover, the public dissemination of such trades and exercises may reveal the identity of a counterparty in violation of CEA sections 2(a)(13)(E)(i) and (C)(iii). Further, the public dissemination of such information may mislead the market.[126] The definition also modifies the list of lifecycle events (''price-forming continuation events''). This modification was made to provide clarity as to the types of lifecycle events that are publicly reportable swap transactions and to provide conformity between Commission regulations.[127]

[120] The Commission's Web site can be accessed at *www.cftc.gov.*

[121] No comments were received in response to the proposed definition of ''real-time public reporting.''

[122] No comments were received in response to the proposed definition of ''remaining party.''

[123] *See* CL–TriOptima.

[124] *See* CL–Chris Barnard.

[125] The Commission notes that the examples provided in the definition of ''publicly reportable swap transaction'' are not exhaustive.

[126] *See* the discussion of § 43.1 for further discussion relating to swaps between affiliates and portfolio compression exercises.

[127] This language is consistent with the definition of ''swap transaction'' in proposed § 23.500(m). *See* 75 FR 81519 (December 28, 2010).

Reporting Party—Proposed § 43.2(w)

The Commission is adopting this definition as proposed with minor conforming changes including adding the word ''publicly'' before ''reportable swap transaction'' and adding ''43'' after ''part.''

Social Size—Proposed § 43.2(x)

The Commission is not adopting the defined term ''social size'' at this time. The Commission will address the concept of ''social size'' in a forthcoming re-proposal of the block trade rules to be published for comment in the **Federal Register**. Comments regarding ''social size'' received in connection with the Proposing Release will be considered by the Commission in its re-proposal of the block trade rules.

Swap Instrument—Proposed § 43.2(y)

In the Proposing Release, the Commission stated that swap instrument groupings or categories should be relatively broad for the purposes of calculating minimum block sizes.[128] The Commission solicited comments addressing how it should refine the definition and received eleven comments from various interested parties, including industry associations representing myriad financial market participants, SDs, an asset manager, potential SDRs and a financial end-user. Several commenters requested further clarification of this definition. Others challenged the Commission's ability to develop adequate swap instrument categories and a definition without adequate data.

Some commenters urged the Commission to consider various criteria when creating groupings or categories of swaps instruments. One commenter provided a list of major currencies to consider while another cited a list of the key drivers of liquidity. Another commenter submitted information on how liquidity should be considered when determining the swap instrument groupings. Other commenters argued that the groupings or categories for ''swap instrument'' should be more specific. One commenter suggested that the Commission define the relevant swap markets and contracts with sufficient granularity to appropriately reflect different types of swap transactions. The Commission does not believe it is necessary to adopt a more granular definition of swap contracts in light of the revisions to the asset class definition, the re-proposal relating to block trades sizes and the implementation phase in.

The Commission agrees that its ability to develop adequate swap instrument groupings or categories would benefit from adequate market data as well as further research. Therefore the Commission has determined not to define ''swap instrument'' at this time. The Commission will address the concept of ''swap instrument'' in a re-proposal of the block trade rules to be published for comment in the **Federal Register**.[129]

Swap Market—Proposed § 43.2(z)

As discussed above, the Commission disagrees that definitions such as ''swap markets,'' ''off-facility swaps,'' ''real-time price disseminators'' and ''third party service providers'' unnecessarily complicate an already complex process.[130] The Commission believes that such terminology, including sufficiently-detailed definitions, is necessary to assist readers' understanding of the rule and to adequately define and describe complex products and the requirements of registered entities and market participants. Nor does the Commission agree that the creation of such terms is inconsistent with the statute. The Commission believes the terms are consistent with the statutory purposes and/or requirements of CEA section 2(a)(13). However, in the interest of clarity the Commission is replacing the term ''swap market'' with ''registered swap execution facility or designated contract market'' in the final rule.

Swap Unwind—Proposed § 43.2(aa)

In light of changes to the term ''publicly reportable swap transaction,'' the Commission is not adopting the defined term ''swap unwind.''

Third-Party Service Provider—Proposed § 43.2(bb)

In light of changes to final § 43.3, the Commission is not adopting the defined term ''third-party service provider.''

Transferee—Proposed § 43.2(cc)

The Commission is adopting this defined term as proposed.

Transferor—Proposed § 43.2(dd)

The Commission is adopting this defined term as proposed.

Unique Product Identifier—Proposed § 43.2(ee)

The Commission is adopting this defined term as proposed with the clarification that the definition refers to a ''product in an asset class or sub-asset class'' and not the asset class itself, as well as an additional reference to appendix A to part 43.

U.S. Person—Proposed § 43.2(ff)

The Commission is not adopting the defined term ''U.S. person'' since the term is not used in the final rules.

3. Additional Issues Relating to Defined Terms

Several commenters suggested adding defined terms that were not included in proposed § 43.2:

Illiquid Markets

Commenters suggested that the Commission define ''illiquid markets'' subject to this provision by reference to particular commodities, such as jet fuel, or by a formula relating to the average number of transactions per day. One comment suggested that market segments be defined by distance on the forward curve.[131] The commenter believes that many swap contracts in physical commodities that are longer than nine months forward should be eligible for a delay in public dissemination. Another commenter suggested that the determination of what constitutes an illiquid market should be based on the number of reported transactions, and that any market in which the average number of transactions (measured annually) is less than five transactions per day be deemed to be ''illiquid.''[132]

The Commission has considered these comments, but does not believe that a definition of ''illiquid markets'' is necessary to this rulemaking. Comments regarding liquidity are discussed in this Adopting Release and will be further considered by the Commission in its re-proposal of the block trade rules.

Widely Published

One commenter suggested that the term ''widely published,'' as used within the definition of ''public dissemination and publicly disseminate'' is subject to interpretation and should be separately defined.[133] Accordingly, the Commission has defined ''widely published'' in § 43.2 as follows: ''Widely published means to publish and make available through electronic means in a manner that is freely available and readily accessible to the public.''

[128] *See* Real-Time NPRM *supra* note 6, at 76145.

[129] Comments regarding ''swap instrument'' received in connection with the Proposing Release also will be considered by the Commission in its re-proposal of the block trade rules.

[130] *See* CL–NFPEEU.

[131] *See* CL–ATA.

[132] *See* CL–MS.

[133] *See* CL–CME.

C. Section 43.3—Method and Timing for Real-Time Public Reporting

As proposed, § 43.3 specified both the manner in which swap counterparties must report swap transaction and pricing data to the appropriate registered entity, and the manner in which registered entities must publicly disseminate such data. This section also established requirements for: (1) Acceptable forms of media through which swap transaction and pricing data may be made available to the public; (2) appropriate methods to cancel or correct erroneous or omitted data that has been publicly disseminated; (3) the hours of operation that SEFs, DCMs and SDRs must maintain for the public dissemination of swap transaction and pricing data; and (4) recordkeeping of data.

1. Responsibilities of Parties to a Swap (§ 43.3(a))

CEA section 2(a)(13)(F) provides the Commission with authority to determine reporting requirements for swap counterparties:

> [p]arties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

As proposed, § 43.3(a) provided that the reporting party to each swap transaction would be responsible for reporting to a real-time disseminator ''as soon as technologically practicable.'' The designation of the responsible party depended on the execution of the swap transaction. For swap transactions executed on a SEF or DCM, proposed § 43.3(a)(2)(i) provided that the SEF or DCM must report to a real-time disseminator ''as soon as technologically practicable.'' For off-facility swaps, proposed § 43.3(a)(3) established the following hierarchy of counterparties to determine who has the responsibility to report to an SDR:

- If only one party is an SD or MSP, the SD or MSP shall be the reporting party.
- If one party is an SD and the other party is an MSP, the SD shall be the reporting party.
- If both parties are SDs, the SDs shall designate which party shall be the reporting party.
- If both parties are MSPs, the MSPs shall designate which party shall be the reporting party.
- If neither party is an SD or MSP, the parties shall designate which party (or its agent) shall be the reporting party.

Proposed § 43.3(a)(3) provided that the reporting party must report swap transaction and pricing data to a real-time disseminator ''as soon as technologically practicable.'' The above-referenced hierarchy is consistent with the reporting requirements for uncleared swaps to an SDR under CEA section 4r(a).[134]

Proposed § 43.3(a)(2)(i) also specified that for swaps executed on a SEF's or DCM's trading system or platform, ''a reporting party shall satisfy its reporting requirement under this section by executing such reportable swap transaction on [such SEF or DCM].'' Proposed § 43.3(b) provided that a SEF or DCM satisfies its reporting requirement by (i) sending the real-time swap transaction and pricing data to an SDR that accepts and publicly disseminates such data; or (ii) sending such data to a third party service provider. Proposed § 43.3(a)(3) provided that bilateral swaps must be sent to an SDR that accepts and publicly disseminates swap transaction and pricing data.

The Commission received 21 comments addressing the responsibilities of swap counterparties with respect to real-time public reporting. The commenters included industry associations representing myriad financial market participants, a potential SD, and several service providers to the OTC derivatives industry.[135]

Several commenters expressed concern regarding the proposed framework for determining responsibility to report swap transaction and pricing data pursuant to part 43. Specifically, commenters questioned how responsibility is allocated when two parties are within the same category (*i.e.*, both parties are MSPs or end-users). Proposed § 43.3(a)(3) provided that when both parties to an off-facility swap are within the same category, the parties must designate which of them will be the reporting party. Some commenters agreed with this approach. Others, however, believe that the Commission should amend proposed part 43 to follow current market conventions. For instance, a few commenters noted that in the interdealer market, the seller of protection is responsible for confirming the swap transaction with a confirmation service.[136] Another commenter noted that while adopting current market conventions would eliminate confusion in asset classes like credit and equity, it would not eliminate confusion in other asset classes such as foreign exchange.[137] Commenters also questioned whether DCOs should be able to act as reporting parties when an off-facility swap is cleared.[138] Several other commenters argued that the reporting party should be able to contract with any third-party service providers to fulfill its reporting obligation, including SEFs and existing confirmation/matching service providers.[139] Many of these commenters emphasized the perceived adverse and disproportionate impact that reporting obligations would place on end-users.[140] Indeed, one commenter stated that an end-user would have to expend significant time and resources to develop infrastructure and automation to comply with the reporting requirements in the Proposing Release.[141]

Two commenters argued that, to ensure accuracy and reduce fragmentation, only regulated SDRs should be able to satisfy the real-time reporting requirement. Several commenters also stated that the Commission's Proposing Release was not consistent with the SEC's proposed Regulation SBSR regarding the explicit ability of end-users to use third parties to comply with their reporting obligations.

Certain comments focused on the Commission's reporting framework in proposed § 43.3(a)(3). Three commenters contended that the Proposing Release was somewhat inflexible and would create disproportionate burdens on end-users that would not have the capacity to report swap transaction and pricing data

[134] The Commission notes that CEA section 4r(a)(3) provides: (A) ''With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under [CEA sections 4r(a)(1) and (2)];'' (B) ''With respect to a swap in which 1 counterparty is a swap dealer and the other is a major swap participant, the swap dealer shall report the swap as required under [CEA sections 4r(a)(1) and (2)];'' and (C) ''With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under [CEA sections 4r(a)(1) and (2)].''

[135] Commenters include: WFE/IOMA; GFXD; Tradeweb; Working Group of Commercial Energy Firms; FHLBanks; SIFMA AMG; DTCC; Markit; MarkitSERV; BlackRock; Barclays; ISDA/SIFMA; Coalition of Derivatives End-Users; ICE; Foreign Headquartered Banks; WMBAA; NFPEEU; ICI; FSR; Coalition of Energy End-Users; and Better Markets.

[136] The commenters addressing this issue include: Barclays; BlackRock; ISDA/SIFMA; GFXD; Coalition of Energy End-Users; ICE; and MarkitSERV.

[137] *See* CL–GFXD.

[138] The commenters include: Barclays; BlackRock; WFE/IOMA; ISDA/SIFMA; WMBAA; SIFMA AMG; ICI; NFPEEU; DTCC; Markit; and MarkitSERV.

[139] *See* CL–MarkitSERV.

[140] *See* CL–ICI; CL–SIFMA AMG.

[141] *See* CL–ICI.

in real-time.[142] To relieve this perceived burden, these commenters asked the Commission to allow parties to off-facility swaps to independently designate the reporting party or, in the alternative, to place most of the responsibility on dealers and MSPs. These commenters believe that the swap counterparties should be able to decide the reporting party, regardless of whether the parties are within the same category.

As noted, the Proposing Release provided that the reporting party must report swap transaction and pricing data ''as soon as technologically practicable.'' [143] The Commission solicited comments as to whether it should establish maximum reporting timeframes for the various categories of reporting parties to swap transactions (*e.g.*, ''as soon as technologically practicable but no later than X minutes''). In response, some commenters recommended that the Commission not establish maximum reporting timeframes, primarily because of the end-users' limited technological reporting capacity and the resulting significant financial burdens on end-users.[144] These commenters argued alternatively that if the Commission prescribes specific timeframes, it should aim for an appropriate balance between speed and accuracy and adopt longer time frames for end-users.

Many commenters supported proposed § 43.3(a)(2)(i), which provided that the swap transaction and pricing data reporting requirement is itself satisfied by the act of execution on the SEF or DCM.[145] Commenters reasoned that SEFs and DCMs should have the capability to report transactions ''as soon as technologically practicable'' and to preserve anonymity. Two commenters recommended that the decision where to report remain with the parties of the swap and not be satisfied by executing on a SEF or DCM.[146] As noted in the discussion of § 43.1(b) above, commenters also raised extraterritoriality concerns with regard to reporting parties of swaps.

After consideration of these comments the Commission is adopting § 43.3(a) with certain revisions. The Commission received no comments directly addressing proposed § 43.3(a)(1). It is adopting these provisions with technical and clarifying changes to reflect changes to defined terms in § 43.2 as well as a clarification that the reporting should occur ''after such publicly reportable swap transaction is executed.'' Additionally, the Commission is adding a sentence at the end of this provision to make clear that, for purposes of part 43, any references to a ''registered swap data repository'' would include provisionally registered SDRs.[147]

With respect to proposed § 43.3(a)(2)(i), the Commission agrees that SEFs and DCMs should serve as reporting parties for swaps that are executed on the execution platform. The Commission acknowledges the recommendation that the decision where to report the swap transaction and pricing data instead remain with the parties to the swap. However, the Commission believes that there are several benefits to requiring SEFs and DCMs to report these transactions directly to SDRs, including utilization of the technology of the execution platform, increased speed of reporting (and therefore increased transparency) and the ability for straight-through processing.

Proposed § 43.3(a)(2)(ii) prescribed the method and timing for real time public reporting of block trades executed pursuant to the rules of a SEF or DCM. Although the Commission has determined not to adopt the proposed § 43.5 rules relating to block trades, it believes that proposed § 43.3(a)(2)(i) and (ii) can be combined in this final rule to simplify the requirement. For the reasons discussed above, the Commission is adopting the provisions of § 43.3(a)(2) largely as proposed, with several clarifying, technical and conforming changes necessitated by other part 43 definitional and terminology changes.

The provision now references swaps ''executed'' on or pursuant to the rules of a SEF or DCM to ensure that block trades executed ''pursuant to the rules of'' a SEF or DCM would be included in the provision. Accordingly, if parties executed a block trade away from a SEF or DCM and then brought the swap transaction and pricing data pertaining to that block trade to the SEF or DCM pursuant to its rules, the parties to the swap would satisfy their reporting requirements under part 43. The SEF or DCM would then report the swap transaction data for public dissemination.

With respect to proposed § 43.3(a)(3), the Commission has considered comments that DCOs should be authorized to act as reporting parties when an off-facility swap is cleared. The Commission has also noted commenters' contention that the reporting party should be able to contract with any third party, including SEFs and existing confirmation/matching service providers, to satisfy its reporting obligation. The Commission agrees that the reporting party to an off-facility swap which is cleared should be able to contract with third parties (including DCOs or confirmation/matching service providers) to meet its reporting obligations under part 43.[148] The Commission believes that competition among third-party providers may foster the development of innovative and cost effective technological solutions that would create efficiencies for market participants that do not have the resources to develop such solutions. The use of third parties in reporting swap transaction and pricing data could reduce costs to market participants. For example, third parties may be able to develop low-cost and readily accessible web-based solutions to enable financial and non-financial end-users to comply with their reporting obligations when entering into transactions with other end-users.[149]

The Commission acknowledges that its Proposing Release and the SEC's proposed Regulation SBSR differ with respect to end-users' reporting obligations.[150] The Commission

[142] The specific commenters include: FSR; ICI; and SIFMA AMG.

[143] Additionally, CEA section 2(a)(13)(A) states that the definition of real-time public reporting means ''to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.''

[144] *See* CL–Coalition for Derivatives End-Users; CL–ISDA/SIFMA.

[145] *See* CL–ICE; CL–Tradeweb; CL–Coalition of Energy End-Users; CL–DTCC; and CL–MarkitSERV.

[146] *See* CL-DTCC; CL–MarkitSERV.

[147] Pursuant to part 49, the Commission may grant provisional registration to an SDR if the applicant is in substantial compliance with the registration standards set forth in § 49.3(a)(4) and is able to demonstrate operational capability, real-time processing, multiple redundancy and robust security controls.

[148] In this circumstance, the Commission notes that the obligation to report remains with the reporting party.

[149] It is important to note that DCOs may provide reporting services; however, real-time reporting and public dissemination must occur ''as soon as technologically practicable'' after execution unless subject to an appropriate time delay as described in § 43.5.

[150] Proposed Regulation SBSR provided, ''[P]roposed Rule 901(a) would not prevent a reporting party to a SBS from entering into an agreement with a third party to report the transaction on behalf of the reporting party. For example, for a SBS executed on a security-based swap execution facility (''SB SEF'') or a national securities exchange, the SB SEF or national securities exchange could transmit a transaction report for the SBS to a registered SDR. By specifying the reporting party with the duty to report SBS information under proposed Regulation SBSR, the Commission does not intend to inhibit the development of commercial ventures to provide trade processing services to SBS counterparties. Nevertheless, a SBS counterparty that is a reporting party would retain the obligation to ensure that information is provided to a registered SDR in the

explicitly permits end-users, SEFs and DCMs to utilize third parties to comply with reporting obligations described in § 43.3 in a manner similar to that described in the SEC's proposed Regulation SBSR. However, unlike proposed Regulation SBSR, the Proposing Release provided that a reporting party's reporting obligation is satisfied by executing a publicly reportable swap transaction on or pursuant to the rules of a SEF or DCM. SEFs and DCMs then have the obligation to report swaps that are executed on or pursuant to their trading system or platform to an SDR pursuant to § 43.3(b)(1), discussed below. A reporting party, SEF or DCM would retain the obligation to ensure that the appropriate information is provided in the appropriate timeframe to an SDR for public dissemination.[151]

The Commission has also considered comments addressing the allocation of reporting obligations when counterparties fall within the same market participant category. The Commission agrees that market conventions may determine which party will be obligated to report to an SDR when both parties to an off-facility swap are within the same category. However, the Commission favors a flexible approach and believes the swap counterparties should decide whether a market convention is used for determining the reporting party. In asset classes where market conventions currently exist, the Commission believes that parties to an off-facility swap should still have the same ability to agree on which party will serve as the reporting party.

In response to these comments, the Commission has added the language ''[u]nless otherwise agreed to by the parties prior to the execution of the publicly reportable swap transaction, the following persons shall be reporting parties for off-facility swaps * * *'' before the listing of reporting parties for off-facility swaps. The Commission concurs with commenters that there may be circumstances in which it makes greater economic or practical sense for a party other than the one described in the hierarchy in § 43.3(a)(3) to be the reporting party. This additional language will give the parties flexibility to agree on the reporting party in situations described in § 43.3(a)(3)(i) and (ii) as long as such agreement occurs prior to the execution of the publicly reportable swap transaction.[152] And the Commission believes that in the situations described in §§ 43.3(a)(3)(iii), (iv) and (v), the designation of the reporting party for an off-facility swap provided for in the rule should be agreed to prior to execution of such swap in order to ensure compliance with the requirements of part 43. The requirement serves to ensure that reporting after execution is not hampered by the parties' inability to agree.

The Commission disagrees that the reporting framework in proposed § 43.3(a)(3) was inflexible and would create disproportionate burdens on end-users which do not have the capability to report swap transaction and pricing data in real-time.[153] In the Commission's view, the approach taken in the Proposing Release created a balanced framework by placing a greater burden on SDs and MSPs, but not mandating which party must report if two parties are of the same category. Further, the Commission is adding to this provision the flexibility to determine the reporting party for a particular transaction if both parties agree prior to execution of the swap. As discussed above, the Commission believes such an approach is preferable to a prescriptive rule governing reporting.

The reporting framework in § 43.3(a)(3) strikes an appropriate balance from a cost-benefit perspective. Avoiding a more prescriptive regime for assigning the reporting responsibility in transactions between parties of the same category should allow the parties to determine which party can report the transaction at a lower cost.[154] In the Commission's view, it is appropriate to assign a greater cost burden to SDs and MSPs than to the buy-side (including end-users), as SDs and MSPs are likely to be larger, more sophisticated and more active in swap markets and thus more able to realize economies of scale in carrying out reporting responsibilities. In addition, allowing reporting parties to contract with third parties should allay concerns regarding the potential disproportionate cost burden placed on end-users. Moreover, the Commission's definition of ''as soon as technologically practicable'' provides additional flexibility as its application includes consideration of the ''prevalence, implementation and use of technology by comparable market participants.''[155] The hierarchy of reporting parties described in § 43.3(a)(3) for off-facility swaps would not apply to counterparties to block trades.

Commenters have asserted that, to avoid ambiguity, the Commission should explicitly state in part 43 that only data relating to swap transactions where at least one party is a U.S.-based person are required to be reported and publicly disseminated in real-time.[156] The Commission believes that both U.S.-based and non-U.S.-based counterparties that transact on or pursuant to the rules of a SEF or DCM should be subject to all of the real-time reporting requirements.

Proposed § 43.3(a)(4) provided a process for reporting off-facility swaps when no SDR was available. As discussed below, under the Commission's phase in and compliance date schedule, an SDR must be registered or provisionally registered for a particular asset class in order to comply with the part 43 requirements.[157] The Commission believes that coordinating the real-time reporting obligations with the regulatory reporting obligations will enable market participants to reduce reporting costs. Therefore, the Commission is not adopting § 43.3(a)(4) at this time.

2. Public Dissemination of Swap Transaction and Pricing Data (§ 43.3(b))

CEA section 2(a)(13)(D) authorizes the Commission to require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under CEA section 2(a)(13). Accordingly, proposed § 43.3(b) specified the method and timeliness of public dissemination of

manner and form required by proposed Regulation SBSR, even if the reporting party has entered into an agreement with a third party to report on its behalf.'' 75 FR 75211–75212.

[151] Thus, a reporting party, SEF or DCM would be liable for a violation of § 43.3 if, for example, a third party acting on behalf of a reporting party did not report the appropriate swap transaction and pricing data to an SDR for public dissemination.

[152] To the extent that the parties have not agreed to the reporting party prior to the execution of the swap, the reporting party would be the SD or the MSP as applicable.

[153] *See* CL–FSR; CL–ICI; and CL–SIFMA AMG.

[154] The Commission recognizes that a publicly reportable swap transaction may be a multi-asset or hybrid instrument (*e.g.*, a commodity-linked interest rate swap), meaning that each leg of such swap falls in a different asset class. The Commission believes that with respect to reporting such multi-asset or hybrid swaps pursuant to part 43, absent an agreement by the swap counterparties stating otherwise, the reporting party, SEF or DCM shall choose the SDR to which the real-time swap transaction and pricing data is reported for public dissemination. The Commission expects that if an SDR is available for only one leg of a hybrid swap, the reporting party, SEF or DCM will send the real-time swap transaction and pricing data to such SDR for public dissemination.

[155] *See supra* § 43.2 and related discussion in section II.B.2.

[156] *See* CL–ISDA/SIFMA; CL–GFXD; CL–Foreign Headquartered Banks; and CL–TriOptima.

[157] The Commission notes that until such time as an SDR is registered or provisionally registered for an asset class, reporting parties, SEFs and DCMs are permitted to publicly disseminate real-time swap transaction and pricing data.

swap transaction and pricing data for swaps that are executed on a SEF or DCM.

Proposed § 43.3(b)(1)(i) provided that a SEF or DCM must send or otherwise electronically transmit swap transaction and pricing data ''as soon as technologically practicable'' to: (1) An SDR that accepts swaps for the particular asset class of ''reportable swap transactions;'' or (2) a third-party service provider operating on behalf of the SEF or DCM. Such data would then be publicly disseminated in the same manner described in proposed § 43.3(a)(3) for swaps that are executed off-facility (*i.e.*, the SDR publicly disseminates such data ''as soon as technologically practicable''). The Proposing Release specified that if a SEF or DCM chose to use a third-party service provider for public dissemination, the obligation to ensure that such data was publicly disseminated would remain with the SEF or DCM, since the third-party service provider would be an unregulated entity.[158] Accordingly, proposed § 43.3(b)(1)(i) required a SEF or DCM to remain vigilant in monitoring the timeliness and accuracy of the public dissemination if it chooses to use a third-party service provider.

Proposed § 43.3(b)(2)(i) prohibited SEFs, DCMs or any reporting party to a swap from disclosing transaction and pricing data for a particular swap before an SDR or third-party service provider has disseminated data for that swap to the public. This prohibition—sometimes referred to as the ''embargo rule''—is intended to ensure that swap transaction and pricing data is disseminated uniformly and is not published in a manner that creates an unfair advantage for any segment of market participants. At the same time, however, proposed § 43.3(b)(2)(ii) permitted a SEF or DCM to make swap transaction and pricing data available to participants on its market prior to public dissemination of such data. Similarly, proposed § 43.3(b)(2)(iii) permitted an SD to share swap transaction and pricing data with its customers prior to public dissemination of such data. These sections were intended to give SEFs, DCMs and SDs the flexibility to share swap transaction and pricing data with their market participants or customers, respectively, concurrent with the transmission of such data to an SDR or third-party service provider for public dissemination.

Various interested parties commented on the method of dissemination of swap transaction and pricing data to the public.[159] These commenters raised a number of issues including: (1) The use of SDRs for public dissemination; (2) the use of third-party service providers for public dissemination; (3) the requirement that SDRs accept all swaps in a particular asset class; (4) the embargo rule; and (5) the consolidation of data.

Two commenters asserted that SDRs should not be used to real-time report swap transaction and pricing data.[160] One urged that SDRs not be used because they are the last party to receive the swap data;[161] the other suggested that SDRs may have an unfair competitive advantage over third-party real-time disseminators.[162] Conversely, four commenters argued that only SDRs should be used for dissemination of real-time data.[163] One commenter requested that the Commission clarify the responsibilities of an SDR under part 43.[164]

Commenters expressed varying opinions with respect to the use of third-party service providers in public dissemination. One commenter supported the Commission's proposal to give SEFs and DCMs the option to use third-party service providers to satisfy their public dissemination obligation.[165] Five commenters opposed the use of potentially unregistered third-party service providers to satisfy the public dissemination obligation.[166] Several commenters expressly supported the use of DCOs to disseminate real-time data.[167] Specifically, one commenter stated that DCOs should publicly disseminate data for real-time purposes, because they currently have the infrastructure to support such operations.[168] One commenter questioned the Commission's statutory authority to introduce the third-party service provider concept. Indeed, this commenter argued that terms not in section 727 of the Dodd-Frank Act, such as third-party service provider, are unnecessary complications to an already complex statutory mandate and are not required by the Dodd-Frank Act.[169]

Commenters also offered solutions to the circumstance in which no SDR is available to disseminate swap transaction data. One commenter asserted that in those circumstances, if both counterparties are end-users, the reporting party should not be obligated to report at all.[170] Another recommended that if no SDR is available to accept swap transaction and pricing data for a specific asset class, the swap transaction and pricing data should be reported to the Commission by the end of the day.[171]

Commenters also questioned the ''embargo rule.'' One commenter stated that permitting SEFs, DCMs and reporting parties to disclose data prior to public dissemination would afford them an unfair competitive advantage over the general public.[172] Another argued that any information embargo should be eliminated entirely.[173] Another commenter, however, argued that if data were publicly disseminated later, it would cause confusion because ''[the] data, if disseminated after the fact * * * will not be representative of current market data when it is made public.'' [174] One commenter argued that the role of ''work-up'' in the interdealer markets is important and data should not be reported to an SDR until the work-up process is completed.[175] Similarly, this commenter argued that with regard to the ''work-up'' process, trading platforms should be able to share the last trade information to market participants prior to reporting such data to an SDR.

Several commenters urged the Commission to require the consolidation of swap transaction and

[158] While proposed § 43.3(c) generally required SDRs to register and comply with the requirements set forth in proposed part 49, neither the Commission's proposal nor the Commission itself has the authority to require third-party service providers to comply with the same requirements. Instead, proposed § 43.3(d) attempted an indirect approach at requiring third-party service providers to comply with proposed part 49's requirements. In particular, proposed § 43.3(d) provided that a [SEF or DCM] must ensure that the third-party service provider maintains standards for public reporting of swap transaction and pricing data that are, at a minimum, equal to those standards for registered SDRs as described in proposed § 43.3(c) and proposed part 49 of the Commission's regulations.

[159] The commenters include: GFXD; Working Group of Commercial Energy Firms; Coalition of Energy End-Users; WFE/IOMA; ICI; NFPEEU; ISDA/SIFMA; Better Markets, Inc.; Coalition for Derivative End-Users; Reval; Tradeweb; DTCC; CME; Argus; Markit; MarkitSERV; BlackRock; FINRA; and NGX.

[160] *See* CL–Reval; CL–Argus.

[161] *See* CL–Reval.

[162] *See* Meeting with Argus (December 15, 2010).

[163] *See* CL–Markit; CL–NFPEEU; CL–MarkitSERV; and CL–DTCC.

[164] *See* CL–MarkitSERV.

[165] *See* CL–ISDA/SIFMA.

[166] *See* CL–Coalition of Energy End-Users; CL–MarkitSERV; CL–Tradeweb; CL–NFPEEU; and CL–DTCC.

[167] *See* CL–Working Group of Commercial Energy Firms; CL–Reval; CL–BlackRock; CL–CME; and CL–NFPEEU.

[168] *See* CL–CME.

[169] *See* CL–NFPEEU.

[170] *See* CL–Coalition of Energy End-Users.

[171] *See* CL–GFXD.

[172] *See* CL–ICI.

[173] *See* CL–Better Markets.

[174] *See* CL–Coalition of Energy End-Users.

[175] *See* CL–WMBAA.

pricing data.[176] One commenter recommended that the Commission and the SEC jointly establish a single consolidator for the public dissemination of swap and security-based swap transaction and pricing data.[177] As the Commission noted in the Proposing Release, neither the CEA nor the Dodd-Frank Act grants the Commission explicit statutory authority to establish a real-time reporting consolidator.[178] The SEC's proposed Regulation SBSR similarly would require public dissemination of real-time swap data by SDRs and does not establish a consolidator.[179]

With respect to proposed § 43.3(b)(1)(i) and comments addressing the use of SDRs for public dissemination, the Commission agrees with the majority of the commenters that third party service providers should not be used for public dissemination. Accordingly, the Commission is modifying the proposed rule to require that SEFs and DCMs satisfy the requirements of this subparagraph by transmitting swap transaction and pricing data to an SDR for public dissemination ''as soon as technologically practicable'' after such swap has been executed on the SEF or DCM.[180] The Commission expects that ''transmittal'' of such data would mean, at a minimum, some form of electronic conveyance. This change removes the requirement in proposed § 43.3(b)(1)(i) that SEFs and DCMs must publicly disseminate by sending data either to an SDR or to a third-party service provider. SEFs and DCMs may enter into a contractual relationship with a third party service provider to transmit the swap transaction and pricing data to an SDR; however, the SEF or DCM will remain responsible for such reporting requirement pursuant to part 43.

In its Proposing Release, the Commission imposed public dissemination obligations on SDRs that accept and publicly disseminate swap transaction and pricing data in real-time. Further, CEA section 2(a)(13)(D) provides the Commission with the authority to require registered entities to publicly disseminate swap data. The Commission is further clarifying § 43.3(b) by adding § 43.3(b)(2) to provide that SDRs must then ensure that such data is publicly disseminated as soon as technologically practicable'' pursuant to part 43 for SEF and DCM executed swaps as well as off-facility swaps, unless a time delay described in § 43.5 is applicable. The Commission believes that this approach addresses various commenters' suggestions and concerns and is consistent with the SEC's approach in proposed Regulation SBSR. The Commission further believes that eliminating the option to use a third-party service provider will reduce (i) fragmentation in the market; (ii) search costs for market participants; and (iii) inconsistencies in data formats reported to various disseminators. Additionally, SDRs will be registered entities subject to the Commission's jurisdiction, whereas third-party service providers are unregistered entities over which the Commission has no authority. The Commission notes that the rule does not prohibit an SDR from contracting with a third party which may perform the public dissemination function. Should an SDR choose to enter into such a contractual relationship, it will remain responsible to ensure public dissemination under CFTC regulations.

With respect to proposed § 43.3(b)(1)(ii), the Commission has considered the comments and, as discussed, believes that reporting parties (including SEFs and DCMs) should be permitted to transmit their swap transaction and pricing data only to SDRs for public dissemination. Consistent with this determination, the Commission is eliminating in the final rule the option for SEFs, DCMs and reporting parties to send or otherwise electronically transmit their swap transaction and pricing data to a third-party service provider. However, the Commission believes that an SDR may ensure public dissemination by contracting with a third-party service provider to assist in the public dissemination of swap transaction and pricing data in real-time. Finally, in requiring that the reporting parties transmit the real-time swap transaction and pricing data only to SDRs, the Commission notes that nothing in part 43 would prohibit DCOs, SEFs or DCMs from registering as SDRs.

The Commission has considered the comments addressing the embargo rule and has determined to modify proposed § 43.3(b)(3) to provide further clarity.[181] Three clarifying criteria are established in the final rule: (1) Disclosure is made only to market participants on such SEF or DCM (changed from ''participants on its market'');[182] (2) market participants are provided advance notice of such disclosure; and (3) any disclosure must be non-discriminatory.[183] A SEF or DCM that wishes to disclose swap data prior to the public dissemination by an SDR must provide advance notice to its market participants of any disclosure of such swap transaction and pricing data.[184] The Commission also notes that this policy is consistent with the practice of public dissemination in the futures markets. Further, pursuant to § 43.3(b)(3)(i)(A), SEFs and DCMs must not disclose such data prior to sending such data to an SDR for public dissemination.

Section 43.3(b)(3)(ii) replaces proposed § 43.3(b)(2)(iii) and establishes data reporting requirements for SDs and MSPs reporting to their customer bases that are substantially similar to part 43's data reporting requirements for SEFs and DCMs providing such information to their market participants. Section 43.3(b)(3)(ii)(B) establishes that an SD's or MSP's ''customer base'' includes parties that maintain accounts with or have been swap counterparties with such SD or MSP. This provision also expands the scope of parties that can share such swap data to include MSPs, as the Proposing Release permitted only SDs to share such data. Section 43.3(b)(3)(ii)(C) requires an SD or MSP to provide a swap counterparty to a publicly reportable swap transaction with advance notice of any disclosure by the SD or MSP of such swap transaction and pricing data.[185] Further, SDs and MSPs must ensure that the data shared with their customer bases is not shared prior to sending such data to an SDR for public dissemination and that any disclosure is non-discriminatory.

There are several advantages to this approach. Allowing participants to see last trade information for the particular markets on which they are trading, in many cases prior to the data being disseminated to the public, will

[176] *See* CL–Coalition for Derivatives End-Users; CL–Better Markets; CL–Markit; CL–MarkitSERV; and CL–FINRA.

[177] *See* CL–FINRA.

[178] *See* 75 FR 76149.

[179] *See* 75 FR 75208.

[180] The Commission notes that, pursuant to § 48.8(a)(9)(i), registered foreign boards of trade must ensure that swap transaction data be sent to an SDR that is either registered with the Commission or has an information sharing arrangement with the Commission.

[181] The Commission does not intend that § 43.3(b)(3) apply to risk management activities, post-trade processing or regulatory reporting where it would be necessary to transmit the full swap details to comply with such activities.

[182] For the purposes of § 43.3(b)(3)(i), the Commission believes that market participants on a SEF or DCM include those persons with trading privileges on such platform, as well as others without trading privileges that subscribe to the SEF or DCM for information services.

[183] The Commission seeks to avoid a situation that would permit discrimination among those market participants of a SEF or DCM.

[184] For example, a SEF or DCM may provide advance notice by including a provision in its rulebook describing the disclosure of swap transaction and pricing data to market participants.

[185] For example, advance notice is sufficiently given when an SD or MSP, prior to the execution of such publicly reportable swap transaction, informs a swap counterparty that it will disclose the relevant swap transaction and pricing data.

enhance price discovery. Information is not delayed to market participants on a particular SEF or DCM. This approach does not allow the sharing of information by a trading facility or platform immediately upon execution, as one commenter suggested. However, the Commission believes that the requirement to send swap transaction and pricing data to an SDR simultaneously with or prior to sharing such information with persons with trading privileges will reduce potential inequities while incentivizing faster reporting by SEFs, DCMs, SDs and MSPs that wish to share such data. If real-time reporting is delayed as part of a phase in, or if no SDR is registered or provisionally registered in an asset class, the individual markets could share the information to allow for last trade information and post-trade price discovery on a particular SEF or DCM, until such time as compliance is required.

The Commission notes that its part 49 rules governing SDRs do not permit SDRs to use real-time data between the time they receive the data from SEFs, DCMs and reporting parties and the time they publicly disseminate the data.[186]

3. Requirements for Registered Swap Data Repositories in Providing the Public Dissemination of Swap Transaction and Pricing Data (§ 43.3(c))

As proposed, § 43.3(c) required that: (1) SDRs register and comply with the requirements set forth in proposed part 49; (2) SDRs that accept and publicly disseminate real-time data for swaps in selected asset classes shall accept and publicly disseminate real-time data for all swaps within such asset classes; and (3) any SDR that accepts and publicly disseminates real-time data perform an annual independent compliance review.

The Commission is adopting § 43.3(c)(1) substantially as proposed with certain technical and conforming changes.[187] For example, the phrase ''unless the data is subject to a time delay in accordance with § 43.5'' was changed to state, ''except as otherwise provided in this part.'' Additionally, the language ''in accordance with this part'' was added as a clarification.

Proposed § 43.3(c)(2) provided that if an SDR chose to publicly disseminate swap transaction and pricing data in real-time for a specific asset class, the SDR must accept all swaps within such asset class. The Commission received three comments[188] supporting this proposal; these commenters contended that such a provision would help avoid fragmentation of the SDR landscape. The Commission agrees that this provision will reduce fragmentation and is adopting § 43.3(c)(2) as proposed with some minor technical and conforming changes. For example, the phrase ''and public dissemination'' was added to the title of (c)(2), and the phrase ''unless otherwise prescribed by the Commission'' was added to the end of the text. The Commission also notes that the definition of ''asset class'' was revised in § 43.2.[189]

The Commission is adopting § 43.3(c)(3) as proposed with one conforming change: ''43'' was added to the end of the text.[190]

4. Requirements for Third-Party Service Providers—Proposed § 43.3(d)

Proposed § 43.3(d) established requirements for SEFs and DCMs that publicly disseminate through a third-party service provider. As discussed above, the Commission is requiring that public dissemination of swap transaction and pricing data for the purposes of part 43 occur through an SDR. This new requirement obviates proposed § 43.3(d), and the Commission is not adopting the provision.

5. Availability of Swap Transaction and Pricing Data to the Public (§ 43.3(d))

Proposed § 43.3(e) required SDRs that report swap transaction and pricing data to the public in real-time to make the data available and accessible in an electronic format that is capable of being downloaded, saved and/or analyzed. Requiring that SDRs make swap transaction and pricing data available to market participants and the public ensures equal access such data.[191]

The Commission believes that additional clarity is needed with regard to proposed § 43.3(e)—which has been renumbered as § 43.3(d) in the final rules—and therefore is adopting § 43.3(d)(1)–(3). Section 43.3(d)(1) is similar in substance to proposed § 43.3(e); however, the Commission has clarified that the data must be in ''a consistent, usable and machine-readable electronic'' format that ''allows the data to be downloaded, saved and analyzed.'' These modifications address several comments relating to the definitions of ''public dissemination or publicly disseminate'' by providing clarity with respect to the format in which publicly disseminated data must be made available.

Section 43.3(d)(2) reflects the Commission's belief that data must be made freely available to market participants and the public, on a non-discriminatory basis. Finally, § 43.3(d)(3) requires that SDRs provide the Commission with a hyperlink to a Web site where the public can access the publicly-disseminated swap transaction and pricing data. The Commission anticipates that it will make these links available to the public on its own Web site. In this manner, the Commission will provide a centralized location where market participants and the public can find all available swap transaction and pricing data, thus enhancing price discovery.

6. Errors or Omissions (§ 43.3(e))

As proposed, § 43.3(f) outlined the process for correcting or cancelling any errors or omissions in swap transaction and pricing data that are publicly disseminated in real-time. Proposed § 43.3(f)(1) established the process by which such errors or omissions must be corrected or cancelled, depending on whether the data error or omission was discovered by the reporting party to the swap or the non-reporting party. The Proposing Release also sought to prevent fraudulent dissemination for the purpose of distorting market pricing. Specifically, pursuant to proposed § 43.3(f)(2) reporting parties, SEFs, DCMs and SDRs that accept and publicly disseminate swap transaction and pricing data in real-time were prohibited from submitting or agreeing to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in publication or

[186] *See* 76 FR 54550; *See also* 76 FR 54582. Section 43.3(d), discussed below, does not prohibit an SDR from transmitting real-time swap transaction and pricing data to market participants at the same time that such data is publicly disseminated pursuant to part 43. However, as prescribed in § 49.17(g) of the Commission's regulations, the distribution of such data prior to the public dissemination pursuant to part 43 would constitute a ''commercial use'' of such data.

[187] The Commission received no comments on proposed § 43.3(c)(1).

[188] *See* CL–GFXD; CL–DTCC; and CL–MarkitSERV.

[189] *See* § 49.10(b) of the Commission's regulations regarding SDRs which is identical to § 43.3(c)(2).

[190] The Commission received no comments addressing proposed § 43.3(c)(3).

[191] In addition to the comments discussing the definitions of ''as soon as technologically practicable'' and ''public dissemination or publicly disseminate,'' one commenter stated that the Commission should consider the additional requirement that an SDR make available any real-time reporting data to all market participants, including SEFs, DCMs and DCOs on a non-discriminatory basis. *See* CL-Tradeweb at 5 (''Without such requirements, the Commission is effectively taking away from market participants, including swaps markets and DCOs, a potentially significant and valuable component of their market data services.'').

to otherwise evade the reporting requirements of proposed part 43.

Proposed § 43.3(f)(3) specified the appropriate method of canceling incorrectly published swap transaction and pricing data, providing that a real-time disseminator must cancel incorrect data that has been disseminated to the public by publishing a cancellation in the format and manner described in appendix A to proposed part 43. As proposed, the rule would have required a real-time disseminator to correct any erroneous or omitted data disseminated by (i) first publicly disseminating a cancellation of the incorrect data; and (ii) then publicly disseminating the correct data pursuant to the format described in appendix A to proposed part 43. In addition to the substantive changes discussed below, the Commission has determined to make minor technical and conforming changes to § 43.3. In that regard, proposed § 43.3(f) is redesignated as § 43.3(e) in the final rule and will be referred to accordingly below.

The Commission received five comments addressing the proposed treatment of errors and omissions in real-time reporting of swap transaction and pricing data. The commenters—industry groups and a non-financial end-user—generally supported the Proposing Release that errors and omissions should be reported ''as soon as technologically practicable.'' However, one commenter suggested that in the event of a dispute between counterparties regarding the reported data, the reporting party would control the public record regarding the swap and thus would always prevail. The commenter further urged that the non-reporting party should be permitted to report the disputed data to the SEF, DCM or ''real-time disseminator,'' who would then be obliged by rule to review the disputed data.[192] Two commenters contended that the proposed requirement that the cause of the error or omission be included in any correction was unnecessary. These commenters suggested that reporting parties should not be responsible for data that is inaccurately transcribed or corrupted after it has been submitted to an SDR or for correcting data errors of which they are unaware.[193]

One commenter recommended that cancellations not due to an error in the primary economic terms should not be required to be reported in real time, but should instead be reported in accordance with requirements specified in the general reporting rule.[194]

Two commenters noted that longer reporting times would reduce errors. In this regard, they asserted that the proposed reporting times are more ''aggressive'' than those that the industry has committed to in the past, and may lead to an increase in reporting errors.[195] One commenter suggested a reporting time of T+1,[196] while another suggested that the Commission balance the sometimes competing needs of reporting speed and data accuracy in proposing timeframes for regulatory reporting.[197] Another recommended that the Commission explicitly state in the final rule that it will not prosecute, penalize or otherwise impose ''remedies'' on parties for inadvertent errors in reporting under any new standardized information collection system required by the final rules.[198]

In response to comments suggesting that the non-reporting party should be permitted to submit errors or corrections in the case of a dispute between the non-reporting party and the reporting party, the Commission believes that dispute resolution mechanisms should be exercised before the data is sent back to an SDR for public dissemination. In its view, the execution platform or the parties to the swap are in the best position to determine whether an error has been made in public dissemination and to agree upon the corrected swap transaction and pricing data. The Commission is deleting in final § 43.3(e)(1)(i) references to the ''reporting party'' and is requiring instead that one party to a swap must notify the other party if it becomes aware of an error or omission. As described in § 43.3(e)(1)(ii), the reporting party remains responsible for submitting corrections and cancellations.

The Commission is adopting § 43.3(e)(1)(ii) with clarifications to certain terminology changed in the rule (*e.g.,* references to real-time disseminator are eliminated). This provision requires that the reporting party submit corrections to the same SEF, DCM or SDR to which that data was originally submitted for the purposes of reporting. The reporting party may report corrections to a SEF or DCM if it becomes aware that the SEF or DCM submitted incorrect data to an SDR for public dissemination for a swap executed on the platform or if the reporting party submitted the data to a SEF or DCM with respect to a block trade. The Commission notes that pursuant to CEA section 21(c)(2), an SDR has a duty to ''confirm with both counterparties to a swap the accuracy of the data that was submitted.''

The Commission is adopting § 43.3(e)(1)(iii)–(iv) and § 43.3(e)(2)–(4) with technical and clarifying changes. For example, in § 43.3(e)(3), a clarification has been added that cancellations must be publicly disseminated by an SDR ''as soon as technologically practicable'' to mirror the requirements for corrections in § 43.3(e)(4).

Several comments suggested that the Commission omit from the final rule the requirement that the reason for any amendment to swap transaction and pricing data be reported during the correction process. The Commission notes that there is no requirement in § 43.3(e) that such information be included in any type of correction or cancellation report. The Commission requires that any correction of incorrect data that has been publicly disseminated must be reported in the same format as all other data reported under part 43, ''as soon as technologically practicable'' and as set forth in appendix A to part 43.

The Commission agrees that the reporting parties should not be responsible for data that is inaccurately transcribed or corrupted after it has been submitted to an SDR. However, the Commission expects that reporting parties will take due care to ensure that the data submitted to an SDR is accurate and complete. Under § 43.3(a)(2), a reporting party has satisfied its reporting requirement ''by executing a publicly reportable swap transaction on or pursuant to the rules of a registered swap execution facility or designated contract market.'' For off-facility swaps, § 43.3(a)(3) provides that a reporting party has satisfied its reporting requirement when the swap has been ''reported to a registered swap data repository for the appropriate asset class.'' Once the data have been reported in accordance with the relevant provision, the reporting party has satisfied its reporting requirement under this section and will not be responsible for correction of subsequent inaccuracies in said data; no additional modification is necessary.

The Commission considered the comment that cancellations not due to an error in the primary economic terms need not be reported in real time. The Commission does not agree with the suggestion that the correction of errors

[192] *See* CL–MFA.

[193] *See* CL–GFXD; CL–ISDA/SIFMA.

[194] *See* CL-ISDA/SIFMA; CL–Working Group of Commercial Energy Firms.

[195] *See* CL–ISDA/SIFMA.

[196] *See* CL–MFA.

[197] *See* CL–GFXD; CL–ISDA/SIFMA.

[198] *See* CL–AGA.

in data reported under part 43 should be reported pursuant to a periodic reporting schedule. The correction of errors or omissions in real time is necessary to fulfill the price discovery mandate of Section 727 of the Dodd-Frank Act. In addition, depending on the circumstance, a cancellation may or may not be followed by a correction. For example, a cancellation may occur where a clearinghouse does not accept a particular swap for clearing: Such a swap may be busted and would not require a correction. In another situation, one or more terms to a swap may be incorrectly reported by the reporting party, and the error would be realized upon confirmation of the swap. Under the final rules, such a circumstance would require a cancellation of the original—incorrectly reported—data, followed by a correction with accurate swap transaction and pricing data. When reporting a cancellation or correction, the SDR must report the data in the same form and manner in which it was originally reported and include a date stamp reflecting the time of the original transaction, so that market participants and the public are aware of which swap has been canceled or corrected.

The Commission agrees that a longer reporting time would reduce reporting errors. Section 43.5 (''Time delays for public dissemination of swap transaction and pricing data'') provides initial timeframes for reporting swap transaction and pricing data during an initial interim period. These timeframes will provide additional time for reporting. The Commission believes that longer reporting times during the phase in period should allay concerns about errors resulting from speed of reporting and should also provide market participants and registered entities with the necessary time to develop appropriate systems to reduce errors in the reporting process.

One commenter requested an explicit undertaking from the Commission that it will not prosecute, penalize or otherwise impose ''remedies'' on parties for inadvertent errors in reporting under any new standardized information collection system required by the final rules. Such relief is not appropriately part of a rulemaking. Parties seeking such relief may do so pursuant to the no-action procedures of § 140.99.[199]

7. Hours of Operation of Registered Swap Data Repositories (§ 43.3(f))

Proposed § 43.3(g)(1) specified that an SDR that accepts and publicly disseminates real-time data must be able to do so twenty-four hours a day. However, proposed § 43.3(g)(2) permitted an SDR to declare special closing hours to perform maintenance on an ad hoc basis. Such closing would require advance notice by the SDR to market participants and the public. Proposed § 43.3(g)(3) further provided that special closing hours should not be scheduled during periods when the U.S. markets and major foreign swap markets are most active. Proposed § 43.3(h) provided that during special closing hours, an SDR that is a real-time disseminator must have the capability to receive and hold in queue information regarding ''reportable swap transactions.''

The Commission received three comments regarding an SDR's hours of operation. One commenter suggested that the real-time disseminator should operate continuously in light of the global nature of derivatives markets and participation by non-U.S. persons.[200] Another stated that SDRs should operate 24 hours a day, six days a week to permit continuous access to data by regulators (including during periods where individual exchanges or other trading platforms are closed). Requiring such operating hours recognizes the global nature of trading in derivatives markets and the round-the-clock participation in these markets by U.S. persons.[201] The third commenter suggested that scheduled downtime should be permitted so that the ''real-time disseminator'' could perform routine maintenance and to mark the beginning and end of the trading day. This commenter also stated that the downtime periods should extend for no less than 30 minutes and should be scheduled for time periods that are least disruptive (*i.e.,* when market activity is at low levels).[202]

The Commission agrees that the global nature of the swaps market requires that an SDR be able to publicly disseminate swap transaction and pricing data at all times and believes that SDRs that publicly disseminate swap transaction and pricing data should be fully operational 24 hours a day, 7 days a week.[203] Accordingly, in addition to minor technical changes—including the redesignation of proposed § 43.3(g)(1) as § 43.3(f) in the final rule—the Commission has amended the proposed rule to add: ''Unless otherwise provided in this subsection,'' a registered swap data repository ''shall have systems in place to continuously receive and publicly disseminate swap transaction and pricing data in real time pursuant to this part.''

The Commission also agrees that scheduled downtime should be permitted to allow the SDR to perform routine maintenance and that these periods should be scheduled during time periods that are least disruptive (*i.e.,* when market activity for the asset class of the SDR is low). Accordingly, the Commission is adopting in § 43.3(f)(2) a provision that the SDR should, to the extent reasonably possible, avoid scheduling closing hours when, in its estimation, the U.S. market and major foreign markets are most active. However, the Commission does not believe it is necessary to close an SDR daily to mark the beginning and end of the trading day. The Commission also disagrees that SDRs should operate 24/6 and believes that such continuous operating hours are appropriate given the global nature of trading derivatives.[204]

In addition to minor technical changes, the Commission is deleting the reference to closing ''on an ad hoc basis'' with regard to ''special closing hours.'' Instead, § 43.3(f)(1) refers only to ''closing hours.'' These changes allow SDRs to properly maintain their systems while also providing advance notice of scheduled downtime to market participants and the public.

During these downtimes, SDRs must hold the data for public dissemination in queue and release the information with the appropriate execution timestamp upon re-opening. Any downtime by an SDR should be publicly announced, with adequate notice to the market, and should occur at a time when there is anticipated low market activity, which may vary based on asset class. Further, the Commission strongly encourages SDRs to adopt redundant systems to allow public reporting during closing hours.

The Commission intends to ensure that SDRs will provide market participants and the public with sufficient notice of closing hours. To that end, the Commission is adopting new § 43.3(f)(3) to provide that: ''A

[199] The Commission has the ability to review all error and omission reports and is authorized under the CEA and Commission regulations to investigate and prosecute false reports.

[200] *See* CL–Working Group of Commercial Energy Firms.

[201] *See* CL–DTCC.

[202] *See* CL–CME.

[203] The Commission notes that the CEA does not require SDRs to have any scheduled down time.

[204] By requiring SDRs to operate continuously for the purposes of the real-time public reporting requirements of part 43, market participants will be less likely to execute during SDR downtimes in order to delay public dissemination of swap transaction and pricing data.

registered SDR shall comply with the requirements under part 40 of the Commission's regulations in setting closing hours and shall provide advance notice of its closing hours to market participants and the public.''

The Commission previously has deemed policies such as trading hours to be ''rules'' as that term is defined in § 40.1(i) of the Commission's regulations.[205] Accordingly, an SDR is required under part 40 to self-certify its rules, including the establishment and modification of trading hours.[206] The self-certification process under § 40.6 includes posting notice on the SDR's Web site.[207] However, compliance with the part 40 provisions alone may not suffice to meet the notice requirement under § 43.3(f)(3), which requires an SDR to provide reasonable advance notice to participants and the public of its closing hours.[208]

8. Acceptance of Data During Closing Hours (§ 43.3(g))

Proposed § 43.3(h) required that an SDR have the capability to receive and hold in queue information regarding ''reportable swap transactions'' during special closing hours. Consistent with comments addressing hours of operation, the Commission is adopting § 43.3(g) and adding §§ 43.3(g)(1) and (2) to an SDR's responsibilities to accept data during closing hours.[209]

The Commission is adopting § 43.3(g)(1) to clarify that an SDR must publicly disseminate the data that it has held in queue during closing hours promptly upon reopening after closing hours. The Commission anticipates that there may be circumstances in which an SDR is unable to receive and/or hold swap transaction and pricing data in queue during downtime. To ensure that market participants and the public receive timely notice of any failure to hold data in queue, the Commission is adding § 43.3(g)(2) which requires the SDR, upon reopening, to issue notice that it has resumed normal operations in such cases where data was not held in queue. The Commission believes that such notice should be provided for all market participants. Such notice must state that the SDR resumed normal operations but was unable, while closed or for some other reason, to receive and hold in queue such transaction information. Further, § 43.3(g)(2) requires that upon receiving such notice, any SEFs, DCMs or reporting parties whose data was so ''lost'' shall re-report the data to the SDR immediately.[210]

9. Timestamp Requirements (§ 43.3(h))

Proposed § 43.3(i) required that all data related to a ''reportable swap transaction'' be maintained for a period of not less than five years following the time at which the transaction data is publicly disseminated pursuant to part 43. Specifically, proposed § 43.3(i)(1) required that SEFs and DCMs retain all swap transaction information received from reporting parties for the purposes of public dissemination, including block trade and large notional swap data. As proposed, § 43.3(i)(2) directed that SDs and MSPs retain swap transaction and pricing information in accordance with proposed part 43 and proposed part 23.

The Commission received seven comments from various interested parties, including industry associations and a potential SDR, with respect to proposed § 43.3(i).[211] Two commenters asserted that recordkeeping standards should be coordinated internally between Commission rulemakings as well as externally with the SEC and international regulators.[212] Some commenters focused on perceived burdens to end-users, asserting that that the costs and burdens of recordkeeping for end-users would be very high for less-technologically-sophisticated end-users, and that further clarification is necessary with respect to the precise data that should be retained by end-users.[213] One commenter recommended that this clarification should be written in clear, easy-to-understand terms, and that the final rules should provide for a ''CFTC-lite'' regulatory scheme for commercial end-users.[214]

A commenter stated that § 1.31 of the Commission's regulations is outdated and should not be applied to the proposed recordkeeping rules under this part.[215] This commenter further recommended that data retention should be triggered by the execution of the swap transaction, as proposed in the part 45 rules, and not upon public dissemination.[216]

The Commission does not believe that § 1.31 of the Commission's regulations is outdated and inappropriate to the proposed recordkeeping rules. On the contrary, § 1.31 provides that books and records be kept for a period of five years from the date such records are created. In addition, this section provides that records must be readily accessible during the first two years of the five year period. Adopting proposed § 43.3(i) would duplicate the existing recordkeeping requirements of § 1.31.[217] Further, in response to other commenters, the Commission does not believe that a ''CFTC-lite'' regulatory scheme for commercial end-users is contemplated by the Dodd-Frank Act.

The Commission also disagrees that data retention should be triggered by termination of the publicly reportable swap transaction. Real-time data will have been publicly disseminated upon affirmation and there would be no requirement to maintain the data in the interim period. However, the Commission does see merit in the comment that real-time data should be retained for an appropriate period from the date of the price-forming event to allow re-publication of historic price data and support the error correction process.[218] Proposed § 45.2(c) explicitly states that all records required to be kept for a swap shall be kept ''from the date of the creation of the swap through the life of the swap and for a period of at least five years from the final termination of the swap, in a form and manner acceptable to the Commission.'' Therefore, as required by § 1.31 and proposed part 45, real-time swap transaction and pricing data will be

[205] Section 40.1(i) includes in the definition of ''rule'' both ''stated policy'' and ''terms and conditions.'' Further, § 40.1(j)(1)(iv) defines ''terms and conditions'' to include trading hours. 76 FR 44776 at 44791 (July 27, 2011).

[206] Section 40.4(b)(3) provides that changes in trading hours may be implemented without prior approval of the Commission, as long as such changes have been submitted for self-certification as required under the procedures of § 40.6(a). *See* 76 FR 44776, 44793 (July 27, 2011).

[207] The Commission's part 40 regulations include a process by which registered entities may certify rules or rule amendments that establish standards for responding to an emergency.

[208] For example, an SDR could provide notices to its participants or publicize its closing hours in a conspicuous place on its Web site.

[209] As previously noted, the Commission is not required to provide schedule closing times for SDRs.

[210] In addition to these changes, the Commission has made minor technical and conforming changes to this section. For example, proposed § 43.3(g) (''Hours of Operation'') is renumbered as § 43.3(f) in the final rules; proposed § 43.3(h) (''Acceptance of data during special hours) is redesignated as § 43.3(g).

[211] *See, e.g.,* CL–FSR.

[212] *See* CL–WFE; CL–Working Group of Commercial Energy Firms.

[213] *See* CL–Working Group of Commercial Energy Firms; CL–NFPEEU.

[214] *See* CL–NFPEEU.

[215] *See* CL–Working Group of Commercial Energy Firms.

[216] *See id.; See also* 75 FR 76574.

[217] In addition, registered entities are also subject to the swap recordkeeping provisions of proposed § 45.2. Proposed § 45.2 sets forth the swap transaction records that shall be kept by all parties subject to the Commission's jurisdiction and the manner and form in which such records should be kept, including relevant timeframes for retention and access.

[218] *See* CL–DTCC.

retained for a period of five years after the termination of the swap.

After considering comments and the recordkeeping requirements in both the Commission's existing regulations and proposed part 45 rules, the Commission has determined to limit the recordkeeping requirements in part 43 to timestamps. The Commission agrees that the recordkeeping and data retention requirements should be coordinated between CFTC rulemakings, particularly the data recordkeeping and reporting rules. The Commission believes that the recordkeeping provision in proposed § 43.3(i) is duplicative of recordkeeping requirements found in other proposed Commission regulations (*e.g.,* proposed part 45 and proposed part 23 recordkeeping requirements) and is therefore not adopting proposed § 43.3(i). The Commission believes that eliminating this provision addresses commenters' concerns relating to the cost burden of maintaining data beyond the data retained in the ordinary course of business and eliminates duplicative recordkeeping requirements.

The Commission believes that there is a need for SEFs, DCMs, SDRs, SDs and MSPs to record and maintain certain timestamps regarding the transmission and dissemination of real-time swap transaction and pricing data.

The Commission's proposed block trading rules included a requirement in § 43.5(f) that SEFs and DCMs timestamp swap transaction and pricing data with the date and the time to the nearest second. Additionally, and as discussed with respect to appendix A to part 43 below, the Commission proposed that an ''execution timestamp'' be publicly disseminated for all ''reportable swap transactions.'' As discussed above, the Commission has determined not to adopt the proposed rules establishing appropriate minimum size for block trades at this time; proposed § 43.5(f) has been redesignated as § 43.3(h) (''Timestamp Requirements''). As proposed, § 43.5(f)(1) and appendix A to part 43 required SEFs and DCMs to timestamp swap transaction and pricing data with the date and time to the nearest second.

The Commission received two comments objecting to the timestamp reporting requirement as unreasonable and inconsistent with current market practice. One commenter also suggested that the value derived by moving the industry to Coordinate Universal Time (''UTC'') appears minimal when compared to the costs involved.[219] The Commission recognizes that reporting the timestamp to the second is not current industry practice in some asset classes and may incur some technological and cost challenges. However, a timestamp to the second is necessary both for audit trail and enforcement purposes and to provide market participants and the public with sufficient information to re-create a trading day. The Commission will also use the timestamps described in § 43.3(h) to determine whether swaps are being reported ''as soon as technologically practicable'' and to compare the speed at which similar market participants report swap transaction and pricing data to an SDR for public dissemination. Additionally, the Commission will be able to determine how quickly SDRs are publicly disseminating the information that they receive for public dissemination.

The execution timestamp, described in appendix A to part 43, is critical for SDRs in determining when to publicly disseminate swap transaction and pricing data that is subject to a time delay pursuant to § 43.5. Different market participants and different types of execution may be assigned different time delays, so the execution timestamp that is publicly disseminated will be an important aid in following the order of execution of transactions within a particular market.

Notwithstanding potential costs to the industry, the Commission believes that movement to UTC will facilitate the ability for market participants and the public to harmonize swap transactions across the global market. The Commission notes that use of UTC in the part 43 rules refers only to the execution timestamp that is publicly disseminated. Consistency across the global swaps market will better enhance price discovery, and the Commission believes that requiring UTC will allow market participants and reporting parties to recreate the order of trades, provide consistency across all publicly disseminated swap transaction and pricing data and reduce the need for market participants to convert different transaction times to understand the order of trades in a particular market.

For the reasons discussed above, the Commission is adopting the timestamp requirements as proposed in § 43.5(f), with certain modifications, as § 43.3(h). First, the Commission has clarified that the timestamps in § 43.3(h) are in addition to the execution times in appendix A to part 43. Further, the Commission is not limiting these timestamp requirements to block trades and large notional off-facility swaps, as in the Proposing Release, but rather is requiring such timestamps for all publicly reportable swap transactions. The Commission has also made conforming changes to proposed § 43.5(f)(1)–(3) which are reflected in § 43.3(h)(1), (2) and (4).[220] In § 43.3(h)(1)(i), the Commission has changed the term ''reporting party'' to ''swap counterparty'' since block trades must be reported pursuant to the rules of a SEF or DCM.[221]

The Commission has added § 43.3(h)(3) and (4) to require that SDs and MSPs record and maintain for a period of at least five years a timestamp reflecting when data is sent to an SDR for public dissemination.[222]

The commenters' concerns with respect to the costs and burdens of recordkeeping on end-users also have merit. Accordingly, the Commission has determined that, other than the timestamp requirements of § 43.3(h), no additional recordkeeping burdens will be placed upon end-users under part 43.

The Commission agrees that the recordkeeping requirements should be harmonized with the SEC. Many registered entities, SDs and MSPs will be dually registered with the Commission and the SEC, and they will comply with the agency regime that has more robust recordkeeping standards. Finally, the Commission acknowledges that coordination with international regulators will also be necessary in their rulemaking processes and commits that it will continue to do so.

10. Fees Charged by SDRs (§ 43.3(i))

The Commission interprets CEA sections 2(a)(13) and 21 to require that SDRs ensure open and equal access to their data collection services for the purpose of real-time reporting. Consistent with this interpretation, the Commission proposed in § 43.3(j) that fees charged by a real-time disseminator to reporting parties, SEFs or DCMs should be equitable and non-discriminatory, and that volume

[219] *See* CL–ISDA/SIFMA.

[220] The conforming changes to these sections include changing the phrases ''a swap market and a registered swap data repository'' to ''a registered swap execution facility or designated contract market''; ''real-time disseminator'' to ''registered swap data repository''; and ''swap market or reporting party'' to ''registered swap execution facility, designated contract market or reporting party'' to more accurately reflect the terms as defined in § 43.2.

[221] The circumstance described in § 43.3(h)(1)(i) may occur when a block trade is executed away from a SEF or DCM, but pursuant to the rules of a SEF or DCM. The SEF or DCM would need to record a timestamp of when it received such data from a swap counterparty pursuant to its rules.

[222] The Commission anticipates that the timestamp requirements in § 43.3(h)(3) would likely apply only in the case of off-facility swaps and price-forming continuation data in which the SD or MSP is the reporting party.

discounts for data collection shall not be offered, unless available to all reporting parties.

The Commission received ten comments related to fees charged by an SDR for their public dissemination services. A market data vendor suggested that the Commission permit SDRs to employ the sell-side-pays model, or alternatively, a structure that requires only the reporting party to pay SDR fees.[223] Another commenter criticized proposed § 43.3(j) for permitting volume discounts;[224] while others urged that the Commission monitor what is ''fair and reasonable.''[225] A commenter recommended that the Commission clarify that nothing in its rules is intended to impose or imply any limit on the ability of market participants—including parties to the transaction, SEFs and DCOs—to use and/or commercialize data they create or receive in connection with the execution or reporting of swap data, so long as it is consistent with their confidentiality obligations.[226] Two commenters stated that the final rules should clarify that ownership of data is retained by the counterparties to the swap and does not transfer to a SEF, DCM or SDR.[227] Another requested clarification that market participants may use and/or commercialize real-time swap transaction and pricing data.[228] Finally, several commenters stated that SDRs should not charge reporting parties since they will receive fees from the sale of such data to the public.[229]

A commenter stated that it currently provides data to the public free of charge and expects to continue to do so when satisfying its part 43 obligations.[230] Another commenter urged that SDRs be allowed to charge commercially reasonable fees to disseminate data, because otherwise there would be no incentive to improve systems to the detriment of transparency.[231] A commenter urged that the Commission monitor the fee setting of entities under its jurisdiction to ensure that fees are fair and reasonable and do not favor any class of participant at the expense of others.[232] Some commenters suggested that the fees collected by SDRs relating to public dissemination of swap transaction and pricing data should be redistributed to reporting parties;[233] other commenters stated that such fees should be remitted to the Commission to offset the costs of implementing the Dodd-Frank Act.[234]

The Commission emphasizes that section 727 of the Dodd-Frank Act explicitly requires public dissemination of such data. The Commission believes that implicit in this mandate is the requirement that the data be made available to the public at no cost. On the other hand, however, the Commission believes it is reasonable to permit an SDR that publicly disseminates swap transaction and pricing data to charge fair and reasonable fees to providers of swap transaction and pricing data to offset the costs associated with public dissemination of those data. Further, nothing in these rules would prohibit SDRs responsible for the public dissemination of real-time swap data from making commercial use of such data subsequent to public dissemination of those data.[235]

With regard to specific fee arrangements, the Commission believes such matters are business decisions best left to the parties. Further, the Commission believes that issues of data ownership are outside the scope of this rulemaking.

For these reasons, the Commission is adopting proposed § 43.3(j) with minor technical amendments[236] and additional language to clarify that volume-based discounts offered to any reporting party must be made available to all reporting parties.

D. Section 43.4—Swap Transaction and Pricing Data To Be Publicly-Disseminated in Real-Time

1. In General (§ 43.4(a))

Proposed § 43.4(a) provided that swap transaction information must be reported to a real-time disseminator so that the real-time disseminator could publish swap transaction and pricing data in accordance with part 43. As explained more fully in the discussion of § 43.3(b), the Commission has concluded that third party service providers should not be used for public dissemination and that instead real-time swap transaction and pricing data should be reported to SDRs for public dissemination. Accordingly, § 43.4(a) is amended to eliminate the reference to ''real-time disseminator'' and replace it with ''registered swap data repository'' and to remove the phrase ''and format requirements.''

2. Public Dissemination of Data Fields (§ 43.4(b))

The Commission is adopting this section as proposed, with minor conforming changes.[237]

3. Additional Swap Information (§ 43.4(c))

The Commission is adopting this section as proposed, with minor technical and conforming changes. For example, ''match'' is changed to ''compare'' and the phrase ''that accepts and publicly disseminates swap transaction and pricing data in real-time on a transactional or aggregate basis'' is removed from the end of the text.

4. Amendments to Data Fields (Proposed § 43.4(d))

Two commenters questioned the Commission's authority to summarily modify the data fields described in appendix A to proposed part 43 without the opportunity for notice and comment.[238] One commenter indicated that any changes to data fields should not include the publication of identifying information.[239]

The Commission agrees that any changes to the data fields should reflect careful consideration and should not result in the publication of identifying information. Accordingly, the Commission is not adopting proposed § 43.4(d) (''Amendments to data fields'').[240]

5. Anonymity of the Parties to a Publicly Reportable Swap Transaction (§ 43.4(d))

CEA section 2(a)(13)(E)(i) requires the Commission to protect the identities of counterparties to mandatorily cleared swaps, swaps excepted from the mandatory clearing requirement and voluntarily cleared swaps.[241] Similarly,

[223] *See* CL–MarkitSERV.

[224] *See* CL–Better Markets.

[225] *See* CL–BlackRock; CL–MarkitSERV.

[226] *See* CL–Tradeweb.

[227] *See* CL–Markit; CL–DTCC.

[228] *See* CL–Tradeweb.

[229] *See* CL–Working Group of Commercial Energy Firms.

[230] *See* CL–DTCC.

[231] *See* CL–ICE.

[232] *See* CL–BlackRock.

[233] *See* CL–Tradeweb.

[234] *See* CL–Working Group of Commercial Energy Firms.

[235] Section 49.17(g) of the Commission's regulations governs the commercial use by SDRs of both core regulatory data and real-time publicly reported data; § 49.17(g)(3) explicitly prohibits the commercialization by SDRs of publicly disseminated swap transaction and pricing data prior to the public dissemination of such data pursuant to part 43.

[236] The Commission notes that the rule has been redesignated as § 43.3(i).

[237] One commenter recognized that § 43.4(b) does not require the public dissemination of any counterparty-identifying information. *See* CL–MFA.

[238] *See* CL–MFA; CL–ABC/CIEBA.

[239] *See* CL–MFA.

[240] Proposed § 43.4(d) stated that the ''Commission may determine from time to time to amend the data fields described in appendix A to this part.''

[241] As noted, Congress required that such rules ''ensure that the public reporting of swap transaction and pricing data does not disclose the names or identities of the parties to the

Continued

CEA section 2(a)(13)(C)(iii) requires that the Commission's rules maintain the confidentiality of business transactions and market positions of the counterparties to an uncleared swap.[242]

Proposed § 43.4(e)(1) prohibited the public dissemination of real-time swap transaction and pricing data that would identify or facilitate the identification of a party to a swap and further specified that an SDR may not publicly report such data in a manner that discloses or otherwise facilitates the identification of a party to a swap. Proposed § 43.4(e)(2) directed that a SEF, DCM or reporting party must provide an SDR with a specific description of the underlying asset and tenor of a swap. Proposed § 43.4(e)(2) further provided that ''this description must be general enough to provide anonymity but specific enough to provide for a meaningful understanding of the economic characteristics of the swap.'' Proposed § 43.4(i) established a rounding convention for all swaps, including a ''notional cap'' providing that if the notional size of a swap is greater than $250 million, only ''$250+'' would be publicly disseminated.[243]

The Commission recognized that the public dissemination of the underlying asset and tenor of a swap executed off-facility with a specific underlying asset may be more susceptible to an inference as to the identity, business transactions or market positions of the parties to the swap, particularly in the ''other commodity'' asset class.[244] In contrast, the Commission acknowledged that swaps executed on or pursuant to the rules of a SEF or DCM would likely not be subject to the same disclosure risk.[245] To avoid the former result and comply with the statutory mandate, the Commission determined that a more general description than the specific underlying asset and tenor should be publicly disseminated.[246] The Commission provided an example in the Proposing Release of how such a standard could be applied, but did not propose specific guidelines because it recognized that SEFs or DCMs may differ and that new types of swaps may emerge.[247] Proposed § 43.4(e)(2) made clear that its requirement was separate from the requirement that a reporting party report swap data to an SDR pursuant to CEA section 2(a)(13)(G).[248]

As proposed in § 43.4(e)(2), the standard that swap data be ''general enough to provide anonymity but specific enough to provide for a meaningful understanding of the economic characteristics of the swap'' applied to all swaps. However, in the preamble to the Proposing Release, the Commission recognized that SEFs or DCMs differ and sought to clarify that the standard would be applied differently depending on asset class and place of execution. Even if the specific underlying asset and tenor of a swap executed on or pursuant to the rules of a SEF or DCM were publicly disseminated, it would be difficult for market participants to ascertain the identity, business transactions or market positions of the counterparties. Swaps executed on or pursuant to the rules of a SEF or DCM would generally lack the kind of customization that would permit reverse engineering; therefore, identities, business transactions and market positions and of counterparties could not be inferred from the underlying asset and tenor.

The Commission received 25 comments addressing anonymity in the public dissemination of swap transaction and pricing data. The commenters included industry associations representing financial market participants; potential SDs; end-users (both financial and non-financial); potential SDRs; an asset manager; and a data vendor to the OTC derivatives industry. Some commenters expressed a general concern that the provisions in the Proposing Release would not sufficiently protect the anonymity of the market participants. Within this group, some commenters believed that anonymity would not be sufficiently protected by the proposed provisions because of the structure of the swap (*i.e.,* bilateral swap where at least one counterparty is an end-user; bespoke transaction;[249] uncleared bespoke transaction).[250] Others argued that anonymity would be compromised because of the underlying asset (*i.e.,* energy products);[251] still others focused on the liquidity in the market.[252] In addition to general concerns, one commenter asserted that the information that would be publicly disseminated under the proposed rule would fail to enhance price discovery, and thus its disclosure would not further the statutory purpose embodied in CEA section 2(a)(13)(B).[253]

One commenter stated that the anonymity provisions of proposed § 43.4(e)(2) should be applied to all asset classes and to all swaps, regardless of whether the swap is executed on or pursuant to the rules of a SEF or DCM or off-facility.[254] Another requested that the Commission clarify in the final rule ''that the information required to be publicly disseminated cannot identify the participants to a swap or provide information specific to the participants.''[255]

One commenter asserted that whether a swap is liquid enough to clear at a DCO is not determinative of whether the swap exists in a liquid market.[256] The commenter stated that cleared swaps may exist in illiquid markets and the real-time reporting of such swap transaction and pricing data may both negatively impact the price, and disclose the identity, business transactions or market positions of one or more counterparties.[257] The same commenter suggested that the Commission define an ''illiquid market'' and require that swaps traded in such markets receive special treatment for purposes of public dissemination.[258] Similarly, commenters suggested that the Commission begin phasing in real-time public reporting with more liquid contracts and phase in less liquid contracts as it gains more information on markets with less liquidity.[259]

A common belief expressed by many commenters is that special accommodations should be made for off-facility swaps based upon an underlying physical commodity because of the increased risk that the identities of the parties and their business transactions or market positions may be revealed.[260] Some commenters focused on the illiquid markets that exist for

transactions.'' *See* Statement of Sen. Blanche Lincoln *supra* note 15.

[242] Such provision does not cover swaps that are determined to be required to be cleared but are not cleared.

[243] Given the importance of protecting the identities of the parties to a swap and the business transactions and market positions of market participants, and pursuant to its authority under CEA section 2(a)(13)(B), the Commission in adopting part 43 has considered the protection of the anonymity for all swaps, both cleared and uncleared.

[244] Real-Time NPRM *supra* note 6, at 76150—76151.

[245] Real-Time NPRM *supra* note 6, at 76151.

[246] *Id.*

[247] *See* Real-Time NPRM *supra* note 6.

[248] Real-Time NPRM *supra* note 6, at 76174.

[249] *See* CL–Coalition of Energy End-Users.

[250] *See* CL–FHLBanks.

[251] *See* CL–Dominion; CL–ATA; and CL–EMUS.

[252] *See* CL–MS; CL–EMUS; CL–Argus.

[253] *See* CL–Dominion.

[254] *See* CL–Coalition of Derivatives End-Users. The commenter stated that often, after a bond is issued to raise debt in the capital markets, the issuer will enter into an interest rate swap to hedge the interest rate risk.

[255] CL–ISDA/SIFMA at 15.

[256] *See* CL–MS.

[257] The commenter stated that a market in which products that are illiquid are cleared exists for high-yield single name CDS. The Commission notes, however that such single name CDS are not under the Commission's jurisdiction. CL–MS at 3, fn. 4.

[258] *See* CL–MS.

[259] *See* CL–MS; CL–Barclays.

[260] *See* CL–ISDA/SIFMA.

some swaps that fall within the ''other commodity'' asset class with specific pricing points or delivery points, grade level or tenor, specifically for swaps with an underlying asset in the energy space (*e.g.,* natural gas, electricity, jet fuel, etc.).[261] The commenters explained these markets are very illiquid with few transactions and/or few market participants. They argued that trades executed in illiquid markets are more susceptible to reverse engineering, thereby increasing the likelihood that the counterparties' identities, business transactions or market positions could be discovered.[262]

One commenter suggested that the Commission ''allow for an exclusion [from the requirements of part 43] for any transaction between either two end-users or an end-user and a regulated entity with respect to any class of swaps that does not serve a significant price discovery function.'' [263] The commenter stated that in such situations, particularly when the entity is hedging an energy asset, the public dissemination of the swap transaction and pricing data would serve no price discovery function and may reveal the identity of the end-user, depending on whether the underlying asset is in an illiquid market with few market participants.[264] Another commenter stated that the Commission should ensure anonymity by not requiring the public dissemination of swap transaction and pricing data for any bespoke off-facility swaps.[265] Similarly, a commenter suggested the Commission should not require the public dissemination of any swap which falls under CEA section 2(a)(13)(C)(iii) and any end-user swaps under CEA section 2(a)(13)(C)(i) that are clearable but not cleared, until the Commission determines that these swaps are ''significant price discovery'' swaps as set forth in Section 737 of the Dodd-Frank Act.[266] This commenter believed that given the Commission's anonymity provisions, the public dissemination of the underlying asset would not be specific enough to enhance price discovery.

Some commenters suggested that, to ensure anonymity, the Commission should limit the amount of data or the data fields that are publicly disseminated.[267] In this regard, one commenter observed that ''[i]f the list of data fields is extensive [and carries with it substantial implementation costs], yet not complete enough that pricing of instruments can be reproduced easily, then end-users would bear the implementation costs without the commensurate benefit of enhanced price discovery.'' [268] The commenter emphasized the importance of dissemination of the data fields that allow market participants to deduce the material incentives that SDs or MSPs have in connection with a particular swap.[269] Another commenter noted that credit support arrangements are often privately negotiated; to ensure the confidentiality of the business transactions of the counterparties to an uncleared, bespoke swap with a credit support arrangement, a ''credit'' data field should not be publicly disseminated.[270] Commenters suggested that for swaps with a specific delivery or pricing point, a broad geographic region should be publicly disseminated rather than a specific location.[271]

One commenter stated that the ''Tenor'' data field should allow parties to report using a tenor ladder, rather than the month and year, to protect the anonymity of the parties.[272] However, another commenter suggested that tenor should be reported according to the current market convention for a particular swap instrument.[273] Another commenter suggested a contrary approach: Because the tenor of a swap is a primary economic term, the specific tenor of the swap should be reported.[274]

Many commenters questioned how the Commission intended to enforce the provisions of proposed § 43,2(e)(2).[275] Several commenters believed the proposed standard lacked clarity in terms of its application and requested additional guidance.[276] These commenters noted that the Proposing Release placed the burden to provide the requisite description of the swap on the reporting party and requested that the Commission adopt explicit guidelines as to what data should (and should not) be reported to an SDR for purposes of public dissemination. Several other commenters believed that the confidentiality provisions of proposed § 43.2(e)—which includes the rounding convention and notional cap—would not adequately protect the counterparties, particularly when at least one party to the swap was an end-user or when there was an illiquid market for the swap.[277]

Consistent with its statutory mandate, the Commission is requiring real-time reporting that will enhance price discovery while ensuring the anonymity of the swap counterparties and the confidentiality of business transactions and market positions. The Commission agrees that the Proposing Release did not provide sufficient certainty as to what data was required to be reported by the reporting party to the swap. Accordingly, in adopting § 43.4(d), the Commission is not requiring the reporting party, SEF or DCM, to apply the ''general enough but specific enough'' standard in proposed § 43.4(e)(2). Rather, § 43.4(d)(2) requires that the actual underlying asset be reported and publicly disseminated for all swaps in the interest rate, credit, foreign exchange and equity asset classes (''financial swaps'') and for those swaps described in § 43.4(d)(4) with respect to the ''other commodity'' asset class.

As discussed above, one commenter urged that the final rule make clear that publicly disseminated data cannot identify the participants to the swap or information specific to the participants. The Commission believes that proposed § 43.4(e)(1) adequately addresses this concern. Accordingly, § 43.4(d)(1) incorporates the rule text of proposed

[261] *See* CL–ATA; and CL–Barclays.

[262] *See* CL–Dominion.

[263] *Id.* at 7.

[264] *See id.*

[265] *See* CL–Working Group of Commercial Energy Firms. As stated above in section II.A.1. (''Scope'') discussion, the Commission has determined that Section 2(a)(13)(C) requires all swaps to be publicly reported.

[266] *See* CL–Dominion.

[267] *See* CL–Coalition of Energy End-Users; CL–Working Group of Commercial Energy Firms.

[268] CL–Coalition of Derivatives End-Users at 8.

[269] *See id.*

[270] *See* CL–Working Group of Commercial Energy Firms. In the Proposing Release, the Commission asked about whether creditworthiness of counterparty should be publicly disseminated. Real-Time NPRM *supra* note 6, at 76158. *See also infra* discussion in section II.F. (''Appendix A to Part 43 (''Data Fields for Public Dissemination'')'').

[271] *Id.; See also* CL–Argus.

[272] ''[T]he trade data should be mapped to a tenor ladder for public dissemination with longer dated products mapping to one-year or two-year, for example, rather than specific month and year.'' CL–GFXD at 11.

[273] *See* CL–Working Group of Commercial Energy Firms. The commenter provided an example that because energy products tend to trade in seasonal strips except for short tenors, it may be beneficial to report seasonal strips rather than month for such transactions.

[274] *See* CL–ISDA/SIFMA. The commenter stated: ''The Commission requests comment on whether date information for swaps should be rounded to the nearest tenor/month. Many swaps meet specific requirements for end-users. To limit or manipulate data elements that are part of the Primary Economic Terms in order to allow trades with differing terms to be aggregated will reduce post trade transparency. We recommend that this proposal not be implemented.'' *Id.* at 15.

[275] *See* CL–ABC/CIEBA; CL–MFA; and CL–ISDA/SIFMA.

[276] *Id.*

[277] *See, e.g.,* CL–Dominion; CL–Encana; CL–FHLBanks; CL–Coalition for Derivatives End-Users; CL–Argus; and Meeting with NFPEEU (January 19, 2011).

§ 43.4(e)(1) with non-substantive clarifying changes.[278]

As adopted, § 43.4(d)(2) requires that reporting parties, SEFs and DCMs report the actual description of the underlying assets and tenor to the SDR.[279] The SDR must then publicly disseminate the swap transaction and pricing data related to the swap pursuant to appendix A to part 43. The SDR is responsible for applying the appropriate time delay, rounding convention, and notional cap prior to the public dissemination of the swap transaction and pricing data. Section 43.4(d) eliminates the need for the reporting party to report a generalized description of the underlying asset to the SDR. Further, the Commission anticipates that reporting parties will utilize the data connections that will be required to report regulatory data to an SDR, as described in proposed part 45, and that requiring additional fields may create confusion. However, although reporting parties may use the same data stream for reporting regulatory data and real-time data, § 43.4(d)(2) clarifies the intent of the Proposing Release: The reporting requirements for SEFs, DCMs and reporting parties for real-time reporting purposes are separate from the requirement to report to an SDR for regulatory reporting purposes.[280]

In response to commenters who contended that swaps involving end-users should be treated differently to protect anonymity, the Commission acknowledges that end-users may enter bespoke or customized swaps more often than non-end-users. The Commission nonetheless believes it is unnecessary to differentiate by swap counterparties in promulgating a rule to protect anonymity.[281] Rather, as explained below, it is more appropriate to focus on the asset class, the liquidity of certain types of swaps and the execution venue (*i.e.,* SEF, DCM, off-facility) in determining whether a specific description of the underlying asset should be publicly disseminated.[282] In response to commenters who claimed that the public dissemination of swap transaction and pricing data for certain swaps entered into by end-users serves no price discovery function, the Commission disagrees; there is price discovery value in publicly disseminating all arm's-length transactions. Publicly disseminating such data will provide market participants and the public with a clearer understanding of the depth of a particular market, the frequency of trading in the market and the pricing of transactions with the same or similar underlying assets.

With respect to financial swaps, the Commission has considered comments and discussions with market participants, and does not believe that disclosure of information relating to the underlying asset, reference price or index will compromise anonymity. Financial swaps do not have underlying assets with specific delivery or pricing points (such as swaps with underlying physical commodities). Further, the liquidity to hedge such financial swaps, either in the swaps markets or in alternative markets (*i.e.,* futures, cash markets, etc.), reduces concerns that the public dissemination of such swap transaction and pricing data pursuant to part 43 will reveal specific information about market participants.

One commenter asserted that the public dissemination of an interest rate swap in connection with a bond issuance could identify the end-user to the swap.[283] This commenter contended that because bond issuances are a matter of public record, real-time reporting would enable market participants to identify the end-user to the swap by matching the terms of the swap with the bond issuance that is being hedged. In the circumstance described by the commenter, the hedge of interest rate risk after a bond issuance is a routine transaction that market participants expect. The Commission believes that there is sufficient liquidity in the interest rate, credit, equity and foreign exchange asset classes to protect the anonymity of market participants in such asset classes. Further, in the Commission's view, the rounding convention and notional caps provided in §§ 43.4(g) and (h) will help to protect the counterparties' identities, business transactions and market positions for all swaps, regardless of asset class. Therefore, the Commission believes that the public dissemination of the full information relating to financial swaps, such as swaps executed in connection with a bond issuance, will enhance price discovery and will not compromise the anonymity of market participants.

Accordingly, § 43.4(d)(3), as adopted, requires that the actual underlying asset and tenor be publicly disseminated for all swaps in the interest rate, credit, foreign exchange and equity asset classes, regardless of whether a swap is executed on or pursuant to the rules of a SEF or DCM or is an off-facility swap. The rounding convention and notional caps provide sufficient protection to ensure the anonymity of the identities, business transactions and market positions of market participants with respect to financial swaps.

Some commenters asserted that to protect the identities of the counterparties, the actual tenor of the swap should not be publicly disseminated (*i.e.,* use of a tenor ladder or use of current market convention). The Commission has considered the implications of publicly disseminating the various data fields on disclosing the anonymity, business transactions and market positions of swap counterparties. As further explained in the discussion of appendix A to part 43, the Commission is clarifying the data fields in order to protect the identities, business transactions and market positions of market participants while enhancing price discovery to market participants and the public. The Commission agrees with the commenter who stated that the tenor of a financial swap is a primary economic term of the swap. Because the tenor is material to the pricing of a swap, the Commission is requiring that the actual tenor for all swaps be publicly disseminated.[284]

The Commission agrees that there are bespoke, off-facility transactions in which the underlying asset is a physical commodity; these transactions carry a significantly increased likelihood that the public dissemination of the underlying asset may disclose the identity, business transactions or market positions of a counterparty. Several commenters focused on the lack of liquidity in certain ''other commodity'' markets, expressing the view that the public dissemination of the underlying asset or delivery point would reveal information about market participants.

[278] Due to the deletion of proposed § 43.4(d), the anonymity provisions in proposed § 43.4(e) are being moved to final § 43.4(d). Final § 43.4(d)(1) states that ''[s]wap transaction and pricing data that is publicly disseminated in real-time may not disclose the identities of the parties to the swap or otherwise facilitate the identification of a party to a swap. A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time may not publicly disseminate such data in a manner that discloses or otherwise facilitates the identification of a party to a swap.''

[279] Sections 43.4(d)(2)–(4) replace proposed § 43.4(e)(2).

[280] Certain clarifying language was added to the provision found in proposed § 43.4(e)(2).

[281] Further, the statute requires that all swaps, including bespoke swaps, be publicly disseminated so long as the identity, business transactions and market positions of the parties to the swap are not disclosed. *See* CEA sections 2(a)(13)(C) and 2(a)(13)(E)(i).

[282] In determining the appropriate time delay, the Commission also focuses on asset class and place of execution.

[283] *See* CL–Coalition for Derivatives End-Users.

[284] *See infra* discussion in section II.F. (''Appendix A to Part 43 (''Data Fields for Public Dissemination'')'').

Commenters' concerns about illiquid swaps in the ''other commodity'' asset class may be valid; however, the Commission believes that for certain bilateral ''other commodity'' swaps, adequate liquidity exists such that the counterparty's identity, business transactions and market positions will not be disclosed by the public dissemination of such swap transaction and pricing data.[285]

As discussed above, commenters recommended phasing in public reporting and dissemination based on liquidity, and the Commission agrees that, given the anonymity concerns, such an approach is appropriate. The Commission is phasing in the public dissemination requirements for ''other commodity'' swaps, as discussed directly below.

As adopted, §§ 43.4(d)(4)(ii)(A) and (B) provide that for any publicly reportable swap transaction in the ''other commodity'' asset class that references any of the 28 ''Enumerated Physical Commodity Contracts'' including ''other commodity'' swaps that are economically-related to such contracts,[286] the actual underlying physical commodity or referenced price or index must be publicly disseminated by the SDR, regardless of execution method. Additionally, the Commission believes that the public dissemination of any swap that references Brent Crude Oil (ICE) (and any swaps that are economically-related thereto) must reference the actual underlying asset, regardless of execution method.

The 28 Enumerated Physical Commodity Contracts have been identified by the Commission as (i) having high levels of open interest and significant cash flow; and (ii) serving as a reference price for a significant number of cash market transactions.[287] These 28 Enumerated Physical Commodity Contracts are identical to those that will have federally-administered limits imposed on them by the Commission's part 151 rules (Position Limits) generally covering contracts based on the agricultural, metals and energy commodities. Additionally, using the same criteria enumerated above, the Commission is requiring that any swap that references Brent Crude Oil (ICE), or economically-related to Brent Crude Oil (ICE), be reported and publicly disseminated by an SDR.[288] The Commission has determined that these contracts and economically related contracts have sufficient liquidity to ensure that the public dissemination of swap transaction and pricing data for swaps based on these reference assets poses little risk of disclosing identities of parties, business transactions or market positions.

Appendix B to part 43 (''Enumerated Physical Commodity Contracts and Other Contracts'') lists the 28 Enumerated Physical Commodity Contracts and Other Contracts (*i.e.,* Brent Crude Oil (ICE)) for which the actual underlying asset must be publicly disseminated. For the purposes of part 43, swaps are economically related, as described in § 43.4(d)(4)(ii)(B), if such contract utilizes as its sole floating reference price the prices generated directly or indirectly[289] from the price of a single contract described in appendix B to part 43.

For all off-facility swaps that reference an underlying asset(s) in the ''other commodity'' asset class which are not listed on appendix B to part 43, the Commission intends to propose special accommodations for the public dissemination of transaction and pricing data in a future Commission release to be published for comment in the **Federal Register**. Until such time as the Commission adopts these special accommodations, those off-facility swaps not listed in appendix B to part 43 will not be required to comply with the real-time reporting and public dissemination requirements under this part. However, such swaps will be subject to the regulatory reporting requirements, described in proposed part 45, when adopted.[290] The Commission believes that the phasing in of these illiquid, off-facility swaps in the ''other commodity'' asset class addresses commenters' concerns that public dissemination of such information would disclose the identities of the parties, market positions or business transactions.[291]

The Commission is not persuaded by commenters' concerns that public disclosure of ''other commodity'' swaps executed on or pursuant to the rules of a SEF or DCM could disclose the identities of the parties. Parties will execute swaps on or pursuant to the rules of a SEF or DCM because either (i) the swap is subject to the trade execution mandate of CEA section 2(h)(8) and therefore must be traded on a SEF or DCM; or (ii) the swap is not subject to the trade execution mandate but the parties voluntarily execute the swap on or pursuant to the rules of a SEF or DCM.[292] When counterparties voluntarily execute on or pursuant to the rules of a SEF or DCM, the parties' choice to execute such swap evidences their belief that the market is sufficiently liquid and has a sufficient number of participants that the identity of the parties cannot be reverse engineered; thus counterparties' business transactions or market positions would not be discernible.[293]

[285] Additionally, one commenter urged that the fact that a swap may be cleared is not determinative of whether a swap is trading in an ''illiquid'' market. *See* CL–MS. The Commission believes that the interim time delays described in § 43.5(c) adequately address this commenter's concerns, and the Commission intends to further address this comment in the block trade re-proposal.

[286] Similar contracts are described in the Position Limits final rulemaking. *See* 76 FR 71626 (final rule available at *http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-28809a.pdf,* last visited Nov. 30, 2011).

[287] The 28 Enumerated Physical Commodity Contracts are: ICE Futures U.S. Cocoa, ICE Futures U.S. Coffee C, Chicago Board of Trade Corn, ICE Futures U.S. Cotton No. 2, ICE Futures U.S. FCOJ–A, Chicago Mercantile Exchange Live Cattle, Chicago Board of Trade Oats, Chicago Board of Trade Rough Rice, Chicago Board of Trade Soybeans, Chicago Board of Trade Soybean Meal, Chicago Board of Trade Soybean Oil, ICE Futures U.S. Sugar No. 11, ICE Futures U.S. Sugar No. 16, Chicago Board of Trade Wheat, Minneapolis Grain Exchange Hard Red Spring Wheat, Kansas City Board of Trade Hard Winter Wheat, Chicago Mercantile Exchange Class III Milk, Chicago Mercantile Exchange Feeder Cattle, Chicago Mercantile Exchange Lean Hogs, Commodity Exchange, Inc. Copper, New York Mercantile Exchange Palladium, New York Mercantile Exchange Platinum, Commodity Exchange, Inc. Gold, Commodity Exchange, Inc. Silver, New York Mercantile Exchange Light Sweet Crude Oil, New York Mercantile Exchange New York Harbor Gasoline Blendstock, New York Mercantile Exchange Henry Hub Natural Gas, New York Mercantile Exchange New York Harbor Heating Oil.

[288] The 28 Enumerated Physical Commodity Contracts are traded on U.S. DCMs, while Brent Crude Oil (ICE) futures contracts are primarily traded in Europe. Nonetheless, Commission has determined that swaps that utilize a reference price based on Brent Crude Oil (ICE) futures have sufficient trading activity such that public dissemination of the actual underlying asset would not disclose the identities of counterparties or the business transactions and market positions of any person.

[289] An ''indirect'' price link to an Enumerated Physical Commodity Contract or an Other Contract described in appendix B to part 43 includes situations where the swap reference price is linked to prices of a cash-settled contract described in appendix B to part 43 that itself is cash-settled based on a physical-delivery settlement price to such contract.

[290] *See* 75 FR 76574.

[291] As one commenter noted: ''A strict set of real-time reporting rules could apply to all ''benchmark'' instruments that have significant price-discovery functions, while non-benchmark instruments could fall under a different set of real-time reporting requirements. In so doing, the Commission would achieve the majority of the price-discovery benefits without the danger of damaging the market structure for the non-benchmark transactions that do not have a meaningful price discovery function.'' CL–Coalition for Derivatives End-Users at 4.

[292] The Commission notes that a swap which is voluntarily executed on or pursuant the rules of a SEF or DCM may or may not be cleared at a DCO.

[293] To the extent that counterparties avail themselves to the rules of a SEF or DCM, they will typically choose to do for the purpose of taking advantage of the liquidity of the SEF or DCM.

The Commission believes that by voluntarily executing a swap on a SEF or DCM, the swap counterparties are already consenting to price transparency, regardless of the manner in which such transaction is executed. If the parties believed that their identities, market positions and business transactions could be exposed, they may choose to enter into an off-facility swap. Accordingly, the Commission is adopting § 43.4(d)(4)(ii)(C) which requires that the actual underlying physical commodity or referenced price or index must be publicly disseminated by an SDR for any swap that is executed on or pursuant to the rules of a SEF or DCM.[294]

The Commission's Proposing Release did not address the manner in which a basis swap should be publicly disseminated and the Commission received no comments addressing the issue. Basis swaps are swaps that are cash-settled based on the difference in pricing of the same (or substantially the same) commodity at different delivery points. Since the parties to a basis swap price the difference between the same (or substantially the same) commodity in two different locations and not the underlying commodity itself, the Commission has not yet determined how such swaps that reference commodities with specific delivery points should be publicly disseminated. Accordingly, for this initial phase in period, the Commission is not requiring the public dissemination of basis swaps when such swap is not executed on or pursuant to the rules of a SEF or DCM and when at least one leg is not based on one of the 28 Enumerated Physical Commodity Contracts or Other Contracts listed in appendix B to part 43.

The Commission agrees that the Proposing Release did not provide adequate certainty as to the reporting requirements applicable to the reporting party to the swap. Accordingly, as described above, § 43.4 does not require the reporting party to a swap or a SEF or DCM to apply a standard which would ensure that transaction data would remain anonymous. Section 43.4(d)(2) provides that for all swaps, the reporting party must report the actual underlying asset and tenor to an SDR. The SDR is responsible for applying the appropriate time delay, rounding convention and notional cap prior to the public dissemination of the swap transaction and pricing data. Furthermore, if the underlying asset of the swap reported is an ''other commodity'' which does not reference one of the Enumerated Physical Commodity Contracts or Other Contracts described in appendix B to part 43, and is not economically related to one of the 28 Enumerated Physical Commodity Contracts or Other Contracts, the SDR which receives such data shall not publicly disseminate such swap's transaction and pricing data at this time.

6. Unique Product Identifier (§ 43.4(e))

Proposed § 43.4(f) provided that if a unique product identifier is developed that sufficiently describes one or more data fields as set forth in appendix A to part 43, then the unique product identifier may be used in lieu of the data fields that it describes. An SDR could determine whether to publicly disseminate the UPI and may ask reporting parties, SEFs and DCMs to provide the UPI as part of the swap transaction and pricing data that must be reported to the SDR for public dissemination.

Several commenters questioned this provision. One commenter stated that multiple unique identifiers could be assigned by different regulators to the same financial entity for the products traded by such entity, unnecessarily creating compliance burdens, operational difficulties, and opportunities for confusion.[295] Another contended that any rule regarding product identifiers should require that they be made available on a ''commercially reasonable basis.''[296] Yet another stated that unique product identifiers should be in place before real-time public reporting begins.[297] The commenter argued that it would be expensive to begin real-time public reporting without unique product identifiers and then have to change systems to account for new unique product identifiers.

The Commission acknowledges that multiple unique identifiers could be assigned by different regulators to the same financial entity but notes as well that the industry, the Commission and prudential regulators are currently working to develop unique product identifiers for the industry.[298] The Commission continues to work with other regulators and market participants to provide support during the development process for unique product identifiers. However, discussion of the assignment process for unique product identifiers is outside the scope of this rulemaking and the Commission does not find it appropriate to make compliance with the part 43 rules contingent upon the existence of unique product identifiers.

For the reasons discussed above, the Commission has determined that no substantial modifications are necessary to proposed § 43.4(f). The Commission has made only technical and conforming changes to § 43.4(f). For example, the section was renumbered as § 43.4(e), and the ''43'' was inserted after ''of this part.''

7. Reporting of Notional or Principal Amounts to a Registered Swap Data Repository (§ 43.4(f))

The information related to the ''price-forming continuation data'' that must be publicly disseminated is included in the definition for ''publicly reportable swap transaction.'' Accordingly, because such provision is redundant, the Commission is not adopting proposed § 43.4(g).

8. Public Dissemination of Rounded Notional or Principal Amounts (§ 43.4(g))

Proposed § 43.4(i) established a rounding convention for the public dissemination of all swaps, as follows:

> The notional or principal amount data fields described in appendix A to this part shall be publicly disseminated as follows:
> (1) If the notional or principal amount is less than 1 million, round to nearest 100 thousand;
> (2) If the notional or principal amount is less than 50 million but greater than 1 million, round to the nearest million;
> (3) If the notional or principal amount is less than 100 million but greater than 50 million, round to nearest 5 million;
> (4) If the notional or principal amount is less than 250 million but greater than 100 million, round to the nearest 10 million;
> (5) If the notional or principal amount is greater than 250 million, round to ''250+.

Several commenters supported the rounding convention as an effective way to protect the anonymity of swap counterparties and recognized that rounding would provide a degree of protection against the front-running of larger transactions.[299] Some commenters contended that because markets vary, so too should the

[294] Section 43.4(d)(4)(ii)(C) includes the public dissemination of the actual underlying physical commodity or referenced price or index for all swaps executed on a SEF or DCM, not just those that are made available for trading, and any block trades executed pursuant to the rules of a SEF or DCM.

[295] *See* CL–ICI.

[296] *See* CL–MarkitSERV.

[297] *See* Meeting with Credit Suisse (April 15, 2011).

[298] The Technology Advisory Committee Subcommittee on Data Standards is one such group that is working to develop unique product identifiers.

[299] *See* CL–Coalition for Derivatives End-Users; CL–WMBAA; and CL–MFA.

rounding convention and notional caps in order to account for the differences in trade sizes and liquidities in different markets.[300] These commenters asserted that these considerations would ensure that material information is not disclosed.[301]

One commenter supported the use of a rounding convention but did not believe the Proposing Release considered the particularity of specific categories of swaps.[302] The commenter suggested that the Commission adopt a more nuanced and granular rounding convention that recognizes that various categories of swaps and their markets.[303] Another commenter argued that the Proposing Release's perceived failure to consider the liquidity, type and tenor of swaps would lead to increased costs for market participants who transact in bespoke swaps in illiquid markets.[304] This commenter further stated that SDs' concerns about the front-running of large transactions would cause them to include an additional premium in their swaps pricing, which ultimately would lead to increased costs of hedging in illiquid markets, and that such costs would, in turn, be passed on to end-users. In contrast, one commenter argued that a rounding convention should not be used and that the notional or principal amounts for all swaps should be publicly disseminated.[305]

The Commission believes that the actual notional or principal amount should be reported to an SDR by reporting parties, SEFs and DCMs. Accordingly, the Commission is adopting § 43.4(f), to assign responsibilities to reporting parties, SEFs and DCMs for reporting the notional or principal amount of a swap to an SDR. As adopted, § 43.4(f)(1) and (2) are similar to the provisions in proposed § 43.4(h)(1) and (2); however, certain conforming and clarifying changes have been made to these rules in light of changes to other provisions of the part 43 regulations.[306]

The Commission agrees that the rounding convention should be more nuanced to take into account the various types of swaps in different asset classes. However, the Commission does not believe it is necessary to have a different rounding convention for each asset class and sub-asset class. Rather, as explained below, the Commission is adopting different notional caps based on asset class as defined in § 43.2 and is separating the notional caps from the rounding convention.[307] The rounding convention is intended to protect the anonymity of swap counterparties. In addition, the rounding convention, combined with the notional caps discussed below and adopted in § 43.4(h), will inhibit parties who may seek to front-run a swap transaction, especially for large swap transactions.

The Commission does not believe the actual notional or principal amounts should be publicly disseminated. The public dissemination of the exact notional or principal amount presents a risk that confidential information would be disclosed in violation of CEA section 2(a)(13). In the Adopting Release, the Commission has revised its proposed rounding convention to adopt a more granular rounding convention in § 43.4(g). This rounding convention will apply to all swaps and should be read in conjunction with the notional caps provided in § 43.4(h), which are asset class specific.[308] The Commission believes that even with the rounding convention, price discovery will be enhanced, as market participants and the public will gain an understanding of the sizes of swaps in particular asset classes while the identities of the parties, market positions and business transactions are protected.

9. Public Dissemination Caps on Notional or Principal Amounts (§ 43.4(h))

Proposed § 43.4(h)(2)(i) established a cap on the public dissemination of notional or principal amounts that were embedded in the proposed rounding convention. The notional caps in the Proposing Release provided that, for all swaps, regardless of asset class or place of execution, ''[i]f the notional or principal amount is greater than 250 million, round to '250+''' for public dissemination purposes.[309] The Commission proposed the notional cap to ensure the anonymity of the parties to a large swap and maintain the confidentiality of business transactions and market positions.

The majority of comments addressing notional caps supported their use. Many commenters suggested modifications to the Proposing Release based on the belief that notional caps should be more granular to account for the differences in tenor, asset class, types of swaps and liquidity of different markets.[310]

Many commenters criticized the proposed cap of $250 million as too high and contended that the Commission failed to consider market liquidity, duration and type of swap. One commenter stated that the notional cap was sufficient to permit the most liquid interest rate derivative products to be executed in very large sizes and to enable dealers to offset risk, confident that the market does not know the actual size of the transaction.[311] Another believed that the proposed notional cap unfairly disadvantaged the natural hedgers in the marketplace. These market participants may have specific portfolio needs that require trading swaps with longer tenors, which are less standardized and are more illiquid.[312]

Others suggested that the Commission set the notional cap at the

[300] *See* CL–WMBAA; CL–MFA; CL–MetLife; and CL–ISDA/SIFMA.

[301] *Id.* If market participants in an illiquid market know that a large swap has been executed, they may be able to identify at least one counterparty, as well as certain market positions or business transactions.

[302] *See* CL–Coalition for Derivatives End-Users.

[303] *Id.*

[304] *See* CL–ABC/CIEBA.

[305] *See* CL–Chris Barnard.

[306] Similarly, proposed part 45 requires that the actual notional or principal amount be reported for the purposes of regulatory reporting to registered swap data repositories.

[307] The term ''asset class'' is defined in § 43.2 and discussed in section II.B.2. (''Defined Terms'').

[308] Section 43.4(g) provides:

''Rounding of notional or principal amount. The notional or principal amount data fields, as described in appendix A to this part, shall be rounded as follows:

(1) If the notional or principal amount is less than 1,000, round to nearest five, but in no case shall a publicly disseminated notional or principal amount be less than five;

(2) If the notional or principal amount is less than 10 thousand but equal to or greater than 1 thousand, round to nearest 1 hundred;

(3) If the notional or principal amount is less than 100 thousand but equal to or greater than 10 thousand, round to nearest 1 thousand;

(4) If the notional or principal amount is less than 1 million but equal to or greater than 100 thousand, round to nearest 10 thousand;

(5) If the notional or principal amount is less than 100 million but equal to or greater than 1 million, round to the nearest 1 million;

(6) If the notional or principal amount is less than 500 million but equal to or greater than 100 million, round to the nearest 10 million;

(7) If the notional or principal amount is less than 1 billion but equal to or greater than 500 million, round to the nearest 50 million;

(8) If the notional or principal amount is less than 100 billion but equal to or greater than 1 billion, round to the nearest 1 billion;

(9) If the notional or principal amount is greater than 100 billion, round to the nearest 50 billion.''

[309] Real-Time NPRM *supra* note 6, at 76174.

[310] *See* CL–ABC/CIEBA. (''For instance, an interest rate swap with a 2 year duration may be highly liquid and thus the threshold of $250 million as the highest rounding threshold might be appropriate. However, an interest rate swap with a 35 year duration may be off-market and illiquid, and typical trades may be significantly less than $250 million, and as such, a lower rounding threshold would be appropriate.''). *Id.* at 9. *See also* CL–ISDA/SIFMA; CL–MetLife.

[311] *See* CL–Coalition of Derivatives End-Users.

[312] *See* CL–SIFMA AMG (''For instance, for a low duration, plain vanilla, highly liquid swap, $250 million as the highest rounding threshold might be appropriate. For a higher duration, less standardized and more illiquid swap, a large trade is typically significantly less than $250 million in notional amount, and a much lower rounding threshold would be appropriate.''). *Id.* at 5.

predetermined, appropriate minimum block trade size.[313] Several commenters agreed that the Commission should use FINRA's Trade Reporting and Compliance Engine (''TRACE'') framework to establish caps for public dissemination of the notional or principal amounts of swaps.[314] One commenter believed that a TRACE-like approach, whereby full trade information is provided to regulators and publicly disseminated within a size range, would sufficiently protect counterparty anonymity and preserve liquidity and price competition in the markets.[315] Another commenter opined that the use of a TRACE-type volume dissemination cap would ensure end-users have sufficient sources of liquidity.[316] Another wrote that if the Commission extended the TRACE masking framework to swaps, the masking thresholds for plain vanilla fixed-floating interest rate swaps would be: $8 Million for 2 year interest rate swaps; $3 million for 5 year interest rate swaps; and $1 million for 10-year and 30-year interest rate swaps.[317] However, this commenter recognized these notional caps were extremely low and suggested, as an alternative, that the Commission set the notional cap at the social size (as defined in proposed § 43.2(x)).[318]

One commenter recommended that the Commission create a tiered system for different categories of swaps.[319] This commenter suggested the following notional cap thresholds for interest rate swaps: $250 Million for swaps with 0–2 year tenors; $200 million for swaps with 2–5 year tenors; $100 million for swaps with 6–10 year tenors; $75 million for interest rate swaps with 11–20 year tenors; and $50 million for swaps with tenors over 20 years.[320] The commenter also suggested three to five year tenor buckets and differentiating between high yield and investment grade for credit index swaps.[321]

Another commenter advocated that notional amounts for commodity swaps be reported and disseminated by units of measure (*e.g.,* MMBtus for gas, MWh for power, etc.) rather than in dollar amounts.[322] This commenter asserted that the sizes of commodity trades are typically smaller than interest rate swap trades, and therefore the notional cap should be smaller to take into account this difference.[323]

One commenter suggested that the Commission could require end of day reporting of swap notional size to regulators until an appropriate minimum block size can be appropriately set, provided that all trades above a certain notional threshold would be reported as ''$X or above.'' This commenter recommended that the Commission revisit the threshold amounts periodically and that the effects on market liquidity be studied.[324]

Another commenter believed the Commission should set notional caps (embedded in the rounding convention) only after the Commission has had the opportunity to analyze data from an SDR.[325] Two commenters objected to the Commission's proposal to use notional caps on the ground that failure to report the actual notional or principal amount would result in underreporting and would fail to enhance price discovery.[326] Another, citing the substantial volume of trading in the FX markets, suggested that the Commission set a notional floor threshold of $1 million whereby all FX swaps which are smaller than the threshold would not be reported.[327]

A commenter stated that accurate aggregate trade volumes by instrument should be computed and disseminated by the end of the day, independent of the choice of masking threshold, and that un-masked trade-by-trade notional amounts should eventually be disseminated after the application of both the masking rule and timing delays in order to facilitate analysis of market trends by market participants and academics.[328]

The Commission agrees with many of the comments and has, for some asset classes, adjusted the notional caps to take into account the differences between various types of swaps.[329] In § 43.4(h), the Commission proposed notional caps for public dissemination purposes. The Commission agrees that a ''one-size-fits-all'' notional cap was inappropriate, and accordingly has established notional caps according to each asset class. Additionally, the Commission extracted the notional caps from the rounding convention and made it a stand-alone section in the final rule to provide the flexibility to adjust the notional caps—as the Commission may determine is appropriate or when an appropriate minimum block size is determined—without having to also change the rounding convention.

The notional caps provided in § 43.4(h) will apply until an appropriate minimum block size is established for a particular group of swaps. However, when an appropriate minimum block size is established for a particular asset class, the notional cap will be adjusted to align with the appropriate minimum block size.[330] The Commission also agrees with commenters that the appropriate minimum block size should have a direct relationship to the notional cap. The Commission believes that the notional cap for a publicly reportable swap transaction should never be less than the appropriate minimum block size for such swap.

The Commission has provided notional caps because it believes that market participants' anonymity should be protected during the period before appropriate minimum block trade sizes are established as well as after the establishment of appropriate minimum block sizes. The notional caps should be read in conjunction with the rounding convention of § 43.4(g) and the publicly reportable data fields provided in appendix A to part 43. The Commission believes that the notional caps, the rounding convention and the data fields required to be publicly disseminated will adequately protect counterparties' identities, business transactions and market positions. The Commission further believes that the public dissemination of the capped notional amount, as opposed to the actual notional or principal amount, will help to prevent front-running of very large trades. In turn, the Commission expects

[313] *See* CL–UBS; CL–SDMA; and CL–WMBAA.

[314] *See* Real-Time NPRM *supra* note 6, at 76161; CL–WMBAA.

[315] *See* CL–WMBAA.

[316] *See* CL–ISDA/SIFMA.

[317] *See* CL–JPM. The commenter calculated the suggested masking thresholds by ''computing how much market risk is represented by the TRACE masking thresholds and using those numbers to map the masking thresholds into other asset classes.'' *Id.* at 13. This commenter also suggested that the Commission should set masking levels near the level that represents the dividing line between retail and institutional trades.

[318] *Id.* In the Proposing Release, ''social size'' was defined to mean ''the greatest of the mode, median and mean transaction sizes for a particular swap contract or swap instrument, as commonly observed in the marketplace.'' Real-Time NPRM *supra* note 6, at 76172.

[319] *See* CL–PIMCO.

[320] *Id.*

[321] *See* Meeting with PIMCO (February 4, 2011).

[322] *See* CL–ISDA/SIFMA.

[323] *Id.*

[324] *See* CL–FIA/FSF/ISDA/SIFMA.

[325] *See* CL–ABC/CIEBA.

[326] *See* CL–Chris Barnard; CL–SDMA.

[327] *See* CL–GFXD.

[328] *See* CL–JPM.

[329] The Commission notes that many comments discussed ''block trades'' as being the only trades which would be able to avail themselves of the notional cap. The Commission did not intend the notional cap to be available only to swaps which would be considered ''block trades'' under the proposed rule, but rather intended that the notional cap be available to all swaps which were greater than a notional or principal amount of $250 MM.

[330] The Commission's block trade re-proposal will address the notional caps as they align with the appropriate minimum block sizes.

that the public dissemination of a notional cap for large trades will not adversely impact market liquidity because market participants will not have to exit the market over concerns that they will be unable to adequately offset their risk without being front run.[331]

The Commission has considered the specific examples and data provided by the commenters for interest rate swaps and agrees that interest rate swaps with different tenors should be provided with different notional caps. The differences take into account the fact that interest rate swaps with longer-dated tenors tend to have smaller notional amounts than those with shorter dated tenors. The difference in notional amounts between longer tenor interest rate swaps (*e.g.,* 30 year) and shorter dated interest rate swaps (*e.g.,* three months) can be attributed to the risk exposure that counterparties are willing to assume for such swaps. Because market participants are willing to assume larger notional sizes based on the duration-adjusted risk of the swap, large trade sizes are more frequently executed for interest rate swaps with a short tenor, as compared to those interest rate swaps with a longer tenor. Therefore, the Commission believes that the notional cap for short term interest rate swaps should be greater than the notional cap for interest rate swaps with longer tenors.

Accordingly, the Commission is providing the following ''interim'' notional caps until such time as an appropriate minimum block size is established. These notional caps are required to be applied by an SDR prior to the public dissemination of the swap transaction and pricing data.[332]

- For Short Term (0–2 year (including 2 year)) interest swaps: $250 MM;
- For Intermediate Term (2–10 year (including 10 year)) interest rate swaps: $100 MM; and
- For Long Term (Greater than 10 year): $75 MM.

For credit swaps (broad-based group or index), pursuant to § 43.4(h)(2), the Commission considered specific examples provided by the commenters in establishing the notional caps for credit index swaps. In the Commission's view, the proposed cap of $250 MM was too high as an interim cap for credit swaps. The Commission recognizes that while certain credit indices may trade at larger notional values than other indices, one cap for the asset class is appropriate for an interim notional cap. Accordingly, the Commission is setting the notional cap for all credit swaps (broad-based group or index) at $100 MM.

The Commission is retaining the $250 MM notional cap for both the equity (broad-based group or index) and FX asset classes. The Commission is confident that a $250 MM notional cap, along with the rounding convention discussed above, will sufficiently protect the anonymity, business transactions and market positions of the counterparties who engage in trades of a large size in these markets.[333]

The Commission agrees that the notional cap for commodity swaps should be lower than for other swaps and is setting the interim notional cap for ''other commodities'' at $25 MM. The Commission made this determination after reviewing block trade sizes for various commodities in the futures markets, exchange of futures for swaps (''EFS'') data on futures, and net position change data in futures.[334] The Commission believes that setting the interim notional cap at such a low notional or principal amount will allow traders entering into very large swaps in the various ''other commodity'' markets a sufficient opportunity to hedge a swap transaction in the market, and will protect the identities, business transactions and market positions of those counterparties who enter into large commodity swaps.

For the ''other commodity'' asset class, the Commission agrees that ''other commodity'' swaps are typically smaller than interest rate swaps. However, the Commission does not agree that it is appropriate to determine the notional cap according to units for each particular ''other commodity;'' such a rule is unnecessarily complicated and will lead to inconsistency across the various types of commodities and across all asset classes. Thus, the Commission believes that, at this time, the notional cap should be expressed as a dollar amount that will apply to all ''other commodities'' and not by different units of measurement (*e.g.,* barrels, MWh, etc.). The Commission anticipates that a determination of whether a swap is capped will depend on whether the price of the underlying commodity as multiplied by the number of units is above the notional cap. Further, the Commission anticipates that the publicly disseminated information for a particular underlying asset may be in units that are adjusted based on the $25 MM cap described below. For example, if crude oil is priced at $100 a barrel and two parties enter into a swap with a notional value of 260,000 barrels, the SDR may publicly disseminate ''$25 MM+'' or may publicly disseminate ''250,000 bbl+.''

E. Section 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data

CEA section 2(a)(13)(E)(iii) provides that, with respect to cleared swaps, the rule promulgated by the Commission shall contain provisions ''to specify the appropriate time delay for reporting large notional swap transactions (block trades) to the public.'' In exercising its authority under CEA section 2(a)(13)(B) to ''make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery,'' the Commission is authorized to prescribe rules reflecting those provisions in CEA section 2(a)(13)(E)(iii) for uncleared swap transactions described in CEA sections 2(a)(13)(C)(iii) and (iv). Consistent with the Commission's statutory obligations, proposed § 43.5(k)(1) specified that the time delay for the public dissemination of swap transaction and pricing data for a block trade or large notional swap shall commence at the time of execution of such block trade or large notional swap.[335]

Proposed § 43.5(k)(2) set the time delay for public reporting of standardized block trades and large notional swaps [336] at 15 minutes from the time of execution. The Proposing Release did not provide specific time delays for customized large notional off-facility swaps. Instead, proposed § 43.5(k)(3) provided that public dissemination of ''customized'' large notional swaps would be subject to a time delay that may be prescribed by the Commission. The Commission also noted in the preamble to the Proposing Release a presumption that large notional swaps in the equity, credit,

[331] Commenters' concerns about front running are substantially mitigated by the time delays for public dissemination. *See* Time Delays discussion and § 43.5.

[332] As discussed above, pursuant to § 43.3(f)(1) and (2), reporting parties, SEFs and DCMs are required to send the actual notional or principal amount of a publicly reportable swap transaction to a SDR. The SDR is then responsible for publicly disseminating the rounded (and capped, if applicable) amount.

[333] No commenters addressed this proposal with respect to notional caps for the equity and FX asset classes.

[334] *See* § 43.4(h)(5).

[335] Proposed § 43.2(l) defined the term ''large notional swap.'' This term has been modified in final § 43.2 to be called ''large notional off-facility swap.'' Accordingly, all references to ''large notional swap'' shall be interchangeable with the term ''large notional off-facility swap'' for the purposes of this final rule.

[336] For example, those swaps that fall under CEA section 2(a)(13)(C)(i) and (iv)—swaps subject to the mandatory clearing requirement or otherwise required to be cleared.

foreign exchange and interest rate asset classes (*i.e.,* financial swaps) would be subject to the same 15 minute time delay proposed for block trades. The Commission solicited comments addressing whether 15 minutes would be an appropriate time delay for large notional swaps in the ''other commodity'' asset class, but acknowledged that longer time delays for the ''other commodity'' asset class may be appropriate.[337]

Twenty-three commenters expressed the view that the time delays for publicly disseminating block trades and large notional off-facility swaps should be longer than those described in the Proposing Release. The commenters recommended several alternatives for various types of swaps. Specifically, commenters recommended a range of time delays for public dissemination of block trades and large notional off-facility swaps, including end-of-day, 24 hours, T+1, T+2 for large notional swaps,[338] a minimum of four hours and 180 days.[339] One commenter recommended beginning with a time delay for block trades of 75 minutes and then decreasing the time delay to between 15 minutes and 45 minutes.[340] The approach described by this commenter would be similar to the method for reducing time delays utilized by TRACE. The same commenter recommended that the time delay for large notional swaps should be at least 24 hours.[341] Five commenters advised the Commission to adopt tiered time delays based on average daily trading volume or appropriate minimum block size.[342] One recommended that the time delay should be set at the lesser of time it takes a dealer to cover its risk and 24 hours after execution.[343] Another commenter recommended that illiquid trades be allowed to report weekly; the same commenter recommended that the Commission conduct an exhaustive study of illiquid bilateral contracts before deciding on an appropriate time delay.[344]

A commenter recommended that the time delay for financial swaps should be one minute or, alternatively, that there should be no delay. This commenter argued that a time delay must be directly related to the market in which the block trade or large notional swap is executed.[345]

Several commenters cautioned that the Commission needs more data before it can set time delays for block trades and large notional swaps.[346] For example, one commenter noted that there is currently insufficient trading data available on which to base the determinations for block trades and public dissemination delays.[347] This commenter suggested waiting until SDRs have collected the relevant data for the Commission to analyze.

In its Proposing Release, the Commission solicited comments on the appropriate time delays for ''customized'' large notional swaps, particularly for commodity swaps with physical underlying assets. Several commenters stated that different markets should have different time delays for public dissemination of block trades and large notional swaps. Specifically, one commenter stated that time delays should be based on asset class, two commenters advised that longer time delays are appropriate for swaps with underlying physical risk (*e.g.,* large notional customized commodities trades); two commenters argued that reporting should be tailored for illiquid markets; and one commenter stated that time delays should be tailored within the foreign exchange asset class.[348] Another commenter stated that time delays should initially be based on current market practices.[349]

One commenter contended that time delays should not be based on the method of execution or market participant and that a 15 minute time delay is adequate.[350] This commenter expressed concern that the voice or hybrid systems would be allowed a longer delay over their electronic competitors and recommended that there be one universal time delay.

A commenter argued that smaller transactions in illiquid markets should be handled similarly to block trades with respect to time delay.[351] This commenter stated that, in illiquid markets, the notional or principal size of a swap may be lower and therefore may not qualify as a block trade or large notional swap. The commenter further explained that time delays for swaps with lower notional or principal amounts in illiquid markets may be just as important as the time delays for very large trades in more liquid markets.

Commenters addressed harmonization between the CFTC and SEC time delay provisions. Some of these commenters asserted that the failure to harmonize the two Commissions' rules could create arbitrage opportunities.[352] One commenter asserted that differences in market structure for swaps and SBS, particularly with regard to end-user participation in the commodity swap markets, should be reflected in the rules.[353]

After considering the comments discussed above, the Commission is adopting § 43.5 to address time delays for the public dissemination of swap data as described below. As adopted, § 43.5 incorporates the language from proposed § 43.5(k)(1) and replaces the language in proposed § 43.5(k)(2) and (3) in order to address commenters' concerns and recommendations and to clarify the time delays for public dissemination of real-time data in consideration of the type of market participant, method of execution and asset class. Additionally, § 43.5 adopts interim time delays for all swaps until such time as appropriate minimum block sizes are finalized in a forthcoming Commission release.

One commenter indicated that SEFs and DCMs should have the technological capability to electronically report the data fields described in proposed part 45.[354] To ensure consistency and reduce reporting costs to market participants, the Commission has coordinated the time delays in this rule with the timeframes for regulatory reporting in the proposed part 45 (''Swap Data Recordkeeping and

[337] The Commission asked specific questions regarding time delays for large notional off-facility swaps. *See* Real-Time NPRM *supra* note 6, at 76167.

[338] *See supra* note 97.

[339] *See* CL–BlackRock; CL–Coalition for Derivatives End-Users; CL–Chesapeake Energy; CL–PIMCO; CL–SIFMA AMG; CL–ATA; CL–Freddie Mac; CL–ICI; CL–Vanguard; CL–Working Group of Commercial Energy End-users; CL–MFA; CL–MetLife; CL–Fannie Mae; CL–Jackson; CL–Eris; and CL–Encana.

[340] *See* CL–FHLBanks.

[341] The Commission notes that although these commenters are suggesting time delays for block trades and large notional off-facility swaps, the Commission is not considering appropriate minimum block sizes in this Adopting Release.

[342] *See* CL–JPM; CL–WMBAA; CL–Barclays; CL–MetLife; and CL–GS.

[343] *See* CL–ATA.

[344] *See* CL–MS.

[345] *See* CL–Better Markets.

[346] *See, e.g.,* CL–JPM; CL–Barclays; CL–Coalition for Derivatives End-Users; CL–FHLBanks; CL–ISDA/SIFMA; CL–SIFMA AMG; CL–Freddie Mac; CL–GFXD; CL–ABC/CIEBA; CL–ATA; CL–Cleary; CL–ICI; and CL–MFA.

[347] *See* CL–SIFMA AMG.

[348] *See* CL–ATA; CL–Barclays; CL–MS; CL–GFXD; CL–ISDA/SIFMA; and CL–BlackRock.

[349] *See* CL–Committee on Capital Markets Regulation.

[350] *See* CL–SDMA.

[351] *See* CL–ATA.

[352] *See, e.g.,* CL–Tradeweb; CL–CME; CL–Markit.

[353] *See* CL–NFPEEU.

[354] *See* CL–Tradeweb. The Commission notes that, since the data that is being required to be publicly disseminated under part 43 and reported for regulatory purposes (as described in proposed part 45) are substantially similar, the ability for SEFs and DCMs to report the data fields required for regulatory purposes indicates that SEFs and DCMs should be able to report the data to an SDR that is required for public dissemination under part 43.

Reporting Requirements'') rules.[355] The Commission anticipates that reporting parties may use one data reporting stream for both regulatory and real-time reporting to reduce costs and optimize efficiency.[356] Accordingly, § 43.5, as adopted, harmonizes the time delays between the two regulatory requirements.

The Commission has added § 43.5(b) to clarify the SDR's responsibilities to publicly disseminate swap transaction and pricing data that is subject to a time delay. Section 43.5(b) provides that, with respect to any time delay that is associated with a particular swap, the SDR shall publicly disseminate the swap transaction and pricing data upon the precise expiration of the time delay specified in § 43.5 and as further described in appendix C to part 43 (''Time Delays for Public Dissemination''). The time delay period is measured from the time of execution of the swap transaction; in this regard, all publicly reportable swap transactions are required to have an execution timestamp. An SDR must hold the data for public dissemination for the precise amount of time specified in § 43.5, as measured from the execution timestamp.[357] For any publicly reportable swap transaction that is not subject to a time delay pursuant to § 43.5 or that is received by an SDR after a time delay has expired, such publicly reportable swap transactions shall be publicly disseminated by the SDR ''as soon as technologically practicable'' after the SDR receives the swap transaction and pricing data.

One commenter recommended that the Commission require end of day reporting of aggregate trade volumes in order to facilitate analysis of market trends by market participants and the academic community.[358] Several other commenters recommended that the Commission phase in the real-time public reporting of swap transaction and pricing data.[359] The Commission acknowledges the commenter's concern that certain swaps in illiquid markets may have small notional sizes, but may still need a time delay. In response, the Commission in adopting § 43.5(c) which provides interim time delays for all swaps, not just block trades and large notional off-facility swaps, but only to the extent that such swaps do not have an appropriate minimum block size.[360] As previously discussed, the Commission intends to address appropriate minimum block sizes in its block trade re-proposal. Accordingly, it is possible that compliance with part 43 may be required before the establishment of appropriate minimum block sizes for certain asset classes and/or groupings of swaps within an asset class. In order to address this situation, § 43.5(c) allows all swaps that do not have established appropriate minimum block sizes to utilize the time delays set forth in final § 43.5(d)–(h). As appropriate minimum block sizes are established for a particular category of swap, all swaps in such category that are below the appropriate minimum block size must be publicly disseminated ''as soon as technologically practicable'' after execution.[361] Those swaps that are at or above the appropriate minimum block size will continue to receive the time delays set forth in § 43.5(d)–(h).

In response to commenters' arguments that the time delays for public dissemination of block trades and large notional off-facility swaps should be longer than 15 minutes, the Commission is phasing in the time delays for public dissemination. The Commission recognizes that it may take time for SEFs, DCMs and SDRs to ensure that the appropriate technology is in place; and market participants may need some phase in time to modify trading strategies to accommodate the new real-time public reporting rules. Thus, the Commission believes that providing longer time delays for public dissemination during the first year or years of real-time reporting will enable market participants to perfect and develop technology and to adjust hedging and trading strategies in connection with the introduction post-trade transparency.[362]

As adopted, § 43.5(d) describes the time delays for the public dissemination of swap transaction and pricing data relating to block trades executed pursuant to the rules of a SEF or DCM. With respect to such swaps, the Commission is imposing an initial time delay of 30 minutes for the one year beginning on the compliance date[363] (''Year 1'') and a 15-minute delay beginning on the first anniversary of the compliance date. These time delays will be assigned to all block trades executed pursuant to the rules of a SEF or DCM regardless of asset class or whether such trade was made available for trading on the SEF or DCM. The Commission believes that SEFs and DCMs will have the technology available to ensure compliance to report data to SDRs within the time delays for public dissemination described in this section.[364]

Further, until the Commission establishes an appropriate minimum block size for a swap or group of swaps, the time delays set forth in § 43.5(d) shall apply to all swaps executed on or pursuant to the rules of a SEF or DCM that do not have an appropriate minimum block size (including swaps that are not made available for trading on the SEF or DCM, but are executed on or pursuant to the rules of a SEF or DCM), so that all such swaps will be subject to a 30 minute time delay for public dissemination for Year 1 and a 15 minute time delay beginning on the first anniversary of the compliance date, as described in § 43.5(c)(2). When an appropriate minimum block size is set for a swap or group of swaps, and such swap is executed on or pursuant to the rules of a SEF or DCM, swap transactions that fall below the appropriate minimum block size are required to be publicly disseminated ''as soon as technologically practicable'' and only block trades would be subject to a 30- or 15-minute time delay.[365] The

[355] *See* 75 FR 76574.

[356] However, the Commission notes that although the same data stream for reporting may be utilized by reporting parties, SEFs and DCMs, real-time data for public dissemination and regulatory data required to be sent to an SDR are viewed as separate regulatory requirements.

[357] Appendix A to part 43 describes the ''execution timestamp'' requirement for public dissemination. See discussion, *infra.*

[358] *See* CL–JPM.

[359] *See* comments relating to Implementation and Phase in discussed in section IV (''Effectiveness/Implementation and Interim Period'') below.

[360] In addition to the initial temporary time delays for all swaps without appropriate minimum block sizes, as provided in final § 43.5(c), § 43.4(g) and (h) provide a rounding convention and caps on the public dissemination of notional or principal amounts to be applied to all swaps in order to help protect counterparties' anonymity and the parties' ability to hedge very large transactions. See discussion above.

[361] The Commission recognizes that the establishment of appropriate minimum block sizes may be an ongoing process. Swaps that do not have appropriate minimum block sizes would continue to receive time delays pursuant to § 43.5(c), however once a swap has an appropriate minimum block size, only block trades and large notional off-facility swaps will receive the time delays § 43.5.

[362] TRACE, which introduced post-trade transparency into the corporate bond market, followed a similar approach by reducing the amount of time delay for public dissemination over time. *See* CL–JPM.

[363] Compliance dates are described below in section III (''Effectiveness/Implementation and Interim Period'').

[364] *See* CL–Tradeweb.

[365] To the extent that an appropriate minimum block trade size is established after the compliance date of the rule, the time delays for the block trades (and large notional off-facility swaps, as described immediately below) would be reduced after the one year period expires. For example, if the compliance date for an interest rate swap is July 1, 2012 and an appropriate minimum block size for interest rate swaps is effective on September 15, 2012, from June

Continued

Commission believes that parties that choose to execute on or pursuant to the rules of a SEF or DCM consent to such price transparency;[366] therefore shorter time delays for public dissemination (*i.e.*, post-trade transparency) are appropriate as compared to certain off-facility swaps.

The Commission agrees that swaps in less liquid markets, as well as large notional off-facility swaps, may be subject to longer time delays, while shorter time delays are appropriate for swaps in more liquid markets. Swaps in the ''other commodity'' asset class and swaps in which non-SDs/non-MSPs are counterparties tend to be less liquid (particularly when such parties are end-users) and may require additional time to offset risk. The Commission also believes that large notional off-facility swaps that are subject to the mandatory clearing requirement (*i.e.*, swaps that are not executed on or pursuant to the rules of a SEF or DCM but are required to be cleared pursuant to CEA section 2(h)(1) and Commission action) will tend to be more liquid than other large notional off-facility swaps.[367]

For large notional off-facility swaps subject to the mandatory clearing requirement, the Commission believes that a distinction should be made between different classes of reporting parties for the purposes of time delays for public dissemination.[368] Large notional off-facility swaps that are subject to mandatory clearing and that have at least one SD or MSP as a counterparty, should have the same time delays as block trades executed pursuant to the rules of a SEF or DCM. The Commission believes that SDs and MSPs will have the ability to report real-time data to SDRs within the time delay periods. Further, the Commission believes that a difference in the time delay between swaps executed off-facility that are subject to the mandatory clearing requirement and those executed on or pursuant to the rules a SEF or DCM could discourage SDs and MSPs from executing such swaps on or pursuant to the rules of a trading platform, which would inhibit the enhancement of price discovery.

As adopted, § 43.5(e) provides time delays for large notional off-facility swaps that are subject to the mandatory clearing requirement. Section 43.5(e)(1) provides that the time delays in § 43.5(e) do not apply to (i) off-facility swaps that are excepted from the mandatory clearing requirement in accordance with CEA section 2(h)(7) and the Commission's regulations; and (ii) those swaps that are subject to the clearing mandate under CEA section 2(h)(2) but which are not cleared.[369] The swaps that are not covered by § 43.5(e) are subject to the longer time delays described in final § 43.5(f)–(h).

Section 43.5(e)(2) applies to large notional off-facility swaps that are subject to the mandatory clearing requirement, in which at least one party to such swap is an SD or MSP. Real-time data relating to such swaps shall be subject to a time delay for public dissemination of 30 minutes for the first year beginning on the compliance date. Section 43.5(e)(2)(B) specifies that the time delay shall be reduced to 15 minutes beginning on the first anniversary of the compliance date of part 43. These time delays correspond to the time delays established in § 43.5(d) for block trades. The Commission believes that SDs and MSPs will have the technology to ensure these swaps are reported to an SDR prior to the expiration of the time delays for public dissemination.[370]

With respect to large notional off-facility swaps subject to the clearing mandate in which neither party is an SD or MSP, such swaps will receive a longer time delay for public dissemination than those swaps in which an SD or MSP is a counterparty. The Commission believes that reporting parties that are not SDs or MSPs and that do not invoke the end-user exception pursuant to CEA section 2(h)(7) and Commission regulations,[371] may not have the same level of infrastructure or reporting technology as SDs and MSPs. Large notional off-facility swaps that are subject to the mandatory clearing requirement will tend to be liquid and generally should be reported sooner than those not subject to the mandatory clearing requirement. Making such swap transaction and pricing data available to market participants quickly and efficiently will enhance price discovery in these markets, while the longer time delays for public dissemination in less liquid markets will provide market participants with a longer period in which to hedge the risk associated with their liquid large notional off-facility swaps.

Accordingly, § 43.5(e)(3), as adopted, provides longer time delays for large notional off-facility swaps that are subject to mandatory clearing and in which neither party is an SD or MSP. Specifically, § 43.5(e)(3)(A) provides that for Year 1, which begins on the compliance date, such large notional off-facility swaps shall be subject to a four hour time delay from the time of execution to the time of public dissemination by the SDR. Section 43.5(e)(3)(B) provides that beginning on the first anniversary of the compliance date of part 43 and for the year following (''Year 2''), the time delay for public dissemination will be reduced to two hours from the time of execution; § 43.5(e)(3)(C) provides that beginning on the second anniversary of the compliance date and thereafter, the time delay for large notional off-facility swaps will be reduced to one hour after execution.

Additionally, § 43.5(c)(3) provides that, until the Commission establishes an appropriate minimum block size for a particular swap or group of swaps, the time delays set forth in § 43.5(e) shall apply to publicly reportable swap transactions that do not have appropriate minimum block sizes, with respect to (i) off-facility swaps that are subject to the mandatory clearing requirement, excluding those off-facility swaps that are excepted from the mandatory clearing requirement pursuant to CEA section 2(h)(7); and (ii) those swaps that are determined to be required to be cleared under CEA

1, 2012—September 14, 2012, all swaps in the interest rate asset class would receive the time delays for ''Year 1.'' From September 15, 2012—June 30, 2013 only block trades and large notional off-facility swaps in the interest rate asset class will receive the time delays described under ''Year 1,'' while any swap in the interest rate asset class that is not a block trade or large notional off-facility swap must be reported and publicly disseminated ''as soon as technologically practicable.'' In this example, beginning on July 1, 2013 block trades and large notional off-facility swaps in interest rates will receive the time delay described for beginning on the first or second anniversary (depending on the type of execution and market participants) and non-block trades/non-large notional off-facility swaps in the interest rate asset class would be required to be reported and publicly disseminated ''as soon as technologically practicable'' after execution.

[366] The price transparency with respect to SEFs and DCMs may be in the form of pre-trade price transparency (depending on the execution method) and post-trade price transparency (through sharing swap execution data with those that have trading privileges on the SEF or DCM).

[367] Such large notional off-facility swaps will only be executed when there is an exception to the mandatory clearing requirement and to the trade execution mandate.

[368] Additionally, the Commission believes that off-facility swaps that are excepted from the mandatory clearing requirement pursuant to CEA section 2(h)(7) and those swaps that are determined to be required to be cleared under CEA section 2(h)(2) but are not cleared should not be included.

[369] The description of these two scenarios is derived from the language in CEA Section 2(a)(13)(C).

[370] Accordingly, the Commission has sought to substantially align the time delays for public dissemination with the timeframes for regulatory reporting.

[371] As mentioned above, § 43.5(e)(1) excludes such swaps from this category of time delays for public dissemination. § 43.5(e)(1) also excludes swaps that are required to be cleared under CEA section 2(h)(2) but are not cleared because no DCO is available to clear.

section 2(h)(2) but which are not cleared. Those off-facility swaps that are subject to (i) and (ii), immediately above, will follow the time delay set forth in § 43.5(e)(2) (*i.e.*, 30 minutes for the year beginning on the compliance date and 15 minutes beginning on the first anniversary of the compliance date). Those off-facility swaps that are subject to the mandatory clearing requirement in which neither party is an SD or MSP will follow the time delay set forth in § 43.5(e)(3) (*i.e.,* four hours for the year beginning on the compliance date, two hours for the year beginning on the first anniversary of the compliance date and one hour beginning on the second anniversary of the compliance date). Once an appropriate minimum block size is established for a particular swap or group of swaps, all swaps described in § 43.5(e) that are below the appropriate minimum block size shall be reported ''as soon as technologically practicable'' and only large notional off-facility swaps shall receive the time delays for public dissemination described in § 43.5(e).

The Proposing Release stated a presumption that the time delay for financial bilateral swaps would be shorter than the time delay for non-financial bilateral swaps. In this regard, two commenters asserted that commodity swaps should have longer time delays for public dissemination than swaps in other asset classes; one stated that financial swaps should have shorter time delays than ''other commodity'' swaps. The Commission agrees and believes that a distinction should be made between swaps that are in the interest rates, equity, credit and foreign exchange asset classes (*i.e.*, financial swaps) and swaps in the ''other commodity'' asset class, since such ''other commodity'' swaps generally have physical commodities as the underlying asset or reference price/index. The Commission believes a longer time delay for the ''other commodity'' swaps is necessary because (i) such swaps reference underlying physical commodities; and (ii) the hedging strategies for swaps in the ''other commodity'' asset class are generally more complex and may take longer than financial swaps (*e.g.,* interest rate swaps, which can be quickly hedged in the swaps, futures or treasury markets).

As adopted, § 43.5(f) provides the time delays for public dissemination of large notional off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes, that are not subject to the mandatory clearing requirement (or are excepted from such requirement pursuant to CEA section 2(h)(7)), in which at least one party is an SD or MSP. Section 43.5(f)(1) provides that the time delay for such large notional off-facility swaps for Year 1 shall last for one hour following execution of such large notional off-facility swap. However, § 43.5(f)(1) includes a provision applicable to those large notional off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes in which the non-SD/non-MSP counterparty is not a financial entity, as defined in CEA section 2(h)(7)(C) and Commission regulations.[372] Under this provision, for situations where real-time swap transaction and pricing data is received by the SDR later than one hour after the time of execution, the SDR must publicly disseminate such data ''as soon as technologically practicable'' after it receives such data. The purpose of this accommodation is to align the time delays for public dissemination with the timeframes provided in the regulatory reporting requirements in order to reduce reporting costs to market participants and to avoid inconsistencies between the reporting rules.[373]

Section 43.5(f)(2) establishes a time delay for public dissemination of such large notional off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes of 30 minutes following the execution such swap for Year 2. Section 43.5(f)(2) provides the same accommodation for large notional off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes in which the non-SD/non-MSP counterparty is not a financial entity, as defined in CEA section 2(h)(7)(C) and Commission regulations. Section 43.5(f)(3) states that beginning on the second anniversary of the compliance date, the time delay for public dissemination for all large notional off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes in which at least one counterparty is an SD or MSP shall be 30 minutes, regardless of the status of any non-SD/non-MSP counterparty.

Section 43.5(c)(4) provides that until the Commission establishes an appropriate minimum block size for a particular swap or group of swaps, the time delays set forth in § 43.5(f) shall apply to publicly reportable swap transactions that do not have appropriate minimum block sizes, with respect to off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes that are not subject to the mandatory clearing requirement, and in which at least one counterparty is an SD or MSP. These time delays shall be one hour for Year 1 and reduced to 30 minutes beginning on the first anniversary of the compliance date. However, those off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes, in which the non-SD/non-MSP counterparty is not a financial entity as defined in CEA section 2(h)(7)(C) and Commission regulations, shall receive the same accommodation to the time delay for public dissemination for Year 1 and Year 2, as described in § 43.5(f)(1) and (2). Once an appropriate minimum block size is established for a particular swap or group of swaps, all swaps described in § 43.5(f) that are below the appropriate minimum block size shall be publicly disseminated ''as soon as technologically practicable'' and only large notional off-facility swaps shall receive the time delays for public dissemination described in § 43.5(f).

As previously noted, the Commission believes that large notional off-facility swaps in the ''other commodity'' asset class should receive longer time delays for public dissemination, as it may take longer to hedge such swap transactions involving physical underlying assets. The Commission believes that the

[372] CEA section 2(h)(7)(C)(i) provides the financial entity definition as it relates to Section 723 of the Dodd-Frank Act. Specifically, the definition states that for the purposes of paragraph 2(h), the term ''financial entity'' means: ''(I) a swap dealer; (II) a security-based swap dealer; (III) a major swap participant; (IV) a major security-based swap participant; (V) a commodity pool; (VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); (VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); (VIII) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956.'' Additionally, CEA section 2(h)(7)(C)(ii) provides exclusions to the definition by stating that ''the Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including—(I) depository institutions with total assets of $10,000,000,000 or less; (II) farm credit system institutions with total assets of $10,000,000,000 or less; or credit unions with total assets of $10,000,000,000 or less.'' CEA section 2(h)(7)(C)(iii) further provides an important limitation to the definition of financial entity by stating that ''such definition shall not include an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company.''

[373] Proposed part 45 recognizes that certain end-users may not have an ability to verify trade information electronically which may increase the time for the reporting party to verify the primary economic terms and real-time data and consequently, the time for the reporting party to report such data to an SDR pursuant to proposed part 45. *See* 75 FR 76574.

''other commodity'' asset class will likely have more non-SDs/non-MSPs that are excepted pursuant to CEA section 2(h)(7) (*i.e.*, non-financial end-users) than the other defined asset classes. Market participants and commenters have expressed concern about the ability to hedge physical commodity swaps and suggested that longer time delays may be appropriate for such swaps. Accordingly, in § 43.5(g), the Commission has established longer time delays for large notional off-facility swaps in the ''other commodity'' asset class.

Section 43.5(g) establishes the time delays for the public dissemination of large notional off-facility swaps in the ''other commodity'' asset class that are not subject to the mandatory clearing requirement (or are excepted from such requirement pursuant to CEA section 2(h)(7)), in which at least one party is an SD or MSP. Specifically, § 43.5(g)(1) provides that for Year 1, the time delay for public dissemination is four hours following the execution of the large notional off-facility swap. However, final § 43.5(g)(1) includes a provision similar to that in § 43.5(f)(1) and (2), for those large notional off-facility swaps in the ''other commodity'' asset class that are not subject to the mandatory clearing requirement and in which the non-SD/non-MSP counterparty is not a financial entity as defined in CEA section 2(h)(7)(C) and Commission regulations. For such swaps, where the real-time swap transaction and pricing data is received by the SDR more than four hours after execution, the SDR must publicly disseminate such data ''as soon as technologically practicable'' after it receives such data. As noted above with respect to § 43.5(f)(1) and (2), the purpose of the provision in § 43.5(g)(1) is to align the time delays for public dissemination with the timeframes for regulatory reporting in order to reduce reporting costs to market participants and to avoid inconsistencies between the reporting rules.

Section 43.5(g)(2) provides a two-hour time delay for the public dissemination of large notional off-facility swaps in the ''other commodity'' asset class, in which at least one party is an SD or MSP, for Year 2. Section 43.5(g)(2) provides a similar accommodation to § 43.5(f)(1) and (2) for large notional off-facility swaps in the ''other commodity'' asset class in which the non-SD/non-MSP counterparty is not a financial entity, as defined in CEA section 2(h)(7)(C) and Commission regulations. Section 43.5(g)(3) specifies that the time delay for public dissemination, beginning on the second anniversary of the compliance date, for all large notional off-facility swaps in the ''other commodity'' asset class, in which at least one counterparty is an SD or MSP, shall be two hours, regardless of the status of any non-SD/non-MSP counterparty.

Section 43.5(c)(5) additionally provides that until the Commission establishes an appropriate minimum block size for a particular swap or group of swaps, the time delays set forth in § 43.5(g) shall apply to publicly reportable swap transactions that do not have appropriate minimum block sizes, with respect to off-facility swaps in the ''other commodity'' asset class that are not subject to the mandatory clearing requirement and in which at least one counterparty is an SD or MSP. Specifically, the time delays shall be four hours for Year 1 and two hours beginning on the first anniversary of the compliance date. However, those off-facility swaps in the ''other commodity'' asset class in which the non-SD/non-MSP counterparty is not a financial entity, as defined in CEA section 2(h)(7)(C) and Commission regulations, shall receive the same accommodation to the time delay for public dissemination during Year 1 and Year 2, as described in § 43.5(g)(1) and (2). Once an appropriate minimum block size is established for a particular swap or group of swaps, all swaps described in § 43.5(g) that are below the appropriate minimum block size shall be reported ''as soon as technologically practicable'' and only large notional off-facility swaps shall receive the time delays for public dissemination described in § 43.5(g).

Several commenters recommended that end-user to end-user large notional swaps have longer time delays. The Commission agrees: Such swaps tend to be customized and the reporting party for such swaps may be less sophisticated and have less ability to leverage existing and new technology as compared to an SD or MSP. The longer time delays for public dissemination ensures consistency to allow the reporting party to mitigate reporting costs by sending real-time swap data at the same time that regulatory data is sent to an SDR.

Section 43.5(h) prescribes the time delay for the public dissemination of large notional off-facility swaps in which neither counterparty is an SD or MSP. Pursuant to § 43.5(h)(1), for Year 1, the time delay for public dissemination of swap transaction and pricing data for such swaps shall be 48 business hours after execution of the swap.[374] Pursuant to § 43.5(h)(2) the time delay for such swaps will reduce to 36 business hours for Year 2. Finally, pursuant to § 43.5(h)(3), beginning on the second anniversary of the compliance date for part 43, the time delay for such swaps will be 24 business hours.

Additionally, § 43.5(c)(6) provides that until the Commission establishes an appropriate minimum block size for a particular swap or group of swaps, the time delays set forth in § 43.5(h) shall apply to publicly reportable swap transactions that do not have appropriate minimum block sizes, with respect to off-facility swaps in which neither counterparty is an SD or MSP. Once an appropriate minimum block size is established for a particular swap or group of swaps, all swaps described in § 43.5(h) that are below the appropriate minimum block size shall be reported ''as soon as technologically practicable'' and only large notional off-facility swaps shall receive the time delays for public dissemination described in § 43.5(h).

With respect to the comment that 15 minutes is a sufficient time delay for all swaps, the Commission believes 15 minutes is a sufficient time delay for swaps executed on or pursuant to the rules of a SEF or DCM and those swaps subject to mandatory clearing in which at least one party is an SD or MSP. However, the Commission has determined to phase in time delays over a two year period and, consistent with comments received and in order to minimize implementation costs, has adopted § 43.5(d) and (e)(2). Further, as discussed above, the Commission believes that large notional off-facility swaps should be provided longer time delays based on market participant and asset class.

The Commission is also adopting § 43.5(c)(7), which provides that, upon the establishment of an appropriate minimum block size for a particular swap or category of swaps, all publicly reportable swap transactions that are below the appropriate minimum block size shall be publicly disseminated ''as soon as technologically practicable'' after execution pursuant to § 43.3. The Commission believes that § 43.5(c)(7) clarifies that, as an appropriate minimum block size becomes effective for a swap or group of swaps, registered entities, market participants and swap

[374] Section 43.2 defines ''business hours'' to mean consecutive hours during on one or more business days. Section 43.2 also defines ''Business day'' to mean the twenty-four hour day, on all days except Saturdays, Sundays and legal holidays, in the location of the reporting party or registered entity reporting data for the swap.

counterparties should anticipate that public dissemination of swap data for transactions below the appropriate minimum block size will occur significantly sooner (*i.e.,* ''as soon as technologically practicable'') following execution of a publicly reportable swap transaction.

With respect to the contention that shorter or no time delays are appropriate, the Commission notes that CEA section 2(a)(13)(E)(iii) explicitly requires the Commission to promulgate rules establishing time delays for reporting large notional swaps (block trades). While the Commission agrees that financial swaps should have shorter time delays, the Commission believes that one minute—as suggested by one commenter—is insufficient for many large trades, particularly where transparency is being introduced into the swaps market for the first time.[375] As noted above, the appropriate minimum block size for swaps will be addressed in the block trade re-proposal that will be published for comment in the **Federal Register**. Until an appropriate minimum block size is set for a swap or grouping of swaps, all such swaps will receive time delays for public dissemination. As explained above, the Commission is initially adopting longer time delays and is reducing those time delays over time in an effort to allow market participants to become accustomed to reporting and publicly disseminating, to minimize costs to market participants and registered entities and to ensure that market participants have adequate time to hedge their large swap transactions.

Several commenters advised that the Commission needs more data before it can set appropriate minimum block sizes and time delays for public dissemination of block trades and large notional off-facility swaps. The Commission agrees that these concerns are valid with respect to the determination of appropriate minimum block sizes, but does not believe that additional data is needed for setting time delays for public dissemination. The Commission has considered all comments relating to the time delays for public dissemination, and as discussed above, § 43.5 takes into account the liquidity of swaps; the ability for certain reporting parties to report to SDRs; the cost-benefit considerations of reporting real-time swap pricing and transaction data; the cost-benefit considerations of publicly disseminating swap pricing and transaction data; and the statutory mandate to provide post-trade transparency and enhance price discovery in the swaps markets.

In its final rule, the Commission has added appendix C to part 43 to further clarify the time delays discussed in § 43.5(d)–(h) as well as the interim time delays described in § 43.5(c); appendix C to part 43 provides Tables C1–C6, each of which represent the time delays for a particular type of swap or swaps described in § 43.5.

Several commenters requested that the SEC's and the Commission's respective public dissemination time delay rules be harmonized. The Commission has routinely coordinated with the SEC regarding the time delays for public dissemination of certain swap transaction and pricing data; however, the two Commissions have jurisdiction over different types of swaps and, as a result, a different concentration of market participants. For example, the ''other commodity'' asset class will tend to have significantly more non-SD/non-MSP counterparties than the credit or equity asset classes.

By initially providing time delays for the public dissemination of all swaps, the Commission will ensure that some public dissemination occurs from the outset, prior to the adoption of rules for appropriate minimum block sizes. Once the appropriate minimum block sizes for particular swaps or swap categories are adopted, only swaps that have a notional or principal amount at or above the appropriate minimum block size threshold will receive a time delay for public dissemination, and all other swaps in the asset class (or sub-asset class or grouping of swaps) must be publicly disseminated by an SDR ''as soon as technologically practicable.'' Providing post-trade price transparency in the swaps markets, even if initially delayed during an interim period, will enhance price discovery and increase transparency. Additionally, as appropriate minimum block sizes are finalized, transparency and price discovery in the swaps markets will be further enhanced as swap transaction and pricing data for swaps below the appropriate minimum block size is publicly disseminated ''as soon as technologically practicable.''

F. Appendix A to Part 43

CEA section 2(a)(13)(B) ''authorizes the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' Consistent with this authorization, the Commission proposed appendix A to proposed part 43. That provision established the appropriate form and manner in which swap transaction and pricing data shall be publicly disseminated. Specifically, appendix A to proposed part 43 included: (1) Data fields to be publicly disseminated; (2) a description of the type of information to be captured in the data fields; (3) an example of how the data fields may be reported; and (4) the application of the data fields.

To account for the differences in publicly reportable swap transactions among asset classes, the descriptions of the data fields in the Proposing Release were not intended to be prescriptive; rather, the data fields were intended to provide flexibility to report various types of swaps while achieving consistency in the data. Further, certain data fields described in the Proposing Release may not be relevant to certain types of transactions; for such transactions, such data fields would not be publicly disseminated. For example, the swap transaction and pricing data that is publicly disseminated with respect to an uncleared off-facility swap will likely be different than those swaps that are executed on a SEF or DCM. Appendix A to proposed part 43 was intended to ensure that the swap transaction and pricing data that is publicly disseminated is sufficient to give meaning to the price of the publicly reportable swap transaction, while protecting the anonymity of the counterparties and considering both the potential effects of the proposal on market liquidity and the cost burden of reporting.

The Commission requested general comments regarding all aspects of the data fields, and asked specific questions related to specific data field including (i) whether to add or delete data fields; (ii) effects on market liquidity; and (iii) the appropriate format for data and manner of public dissemination.

Twenty-six commenters addressed various issues related to the data fields.[376] These commenters focused on specific data fields, the value of reporting data, the Commission's ability to modify data fields, pricing information for customized swaps, end-user to end-user reporting of data and harmonization with the SEC with regard to data fields that must be publicly disseminated.

Two commenters asserted that end-users will face a greater burden in

[375] *See* CL–Better Markets.

[376] Commenters include: FHL Banks; IPAA; IECA; MFA; Working Group of Commercial Energy Firms; ISDA/SIFMA; ABC/CIEBA; GFXD; Better Markets; Committee on Capital Markets Regulation; COPE; Coalition of Energy End-Users; NFPEEU; Markit; Tradeweb; DTCC; TriOptima; Reval; MarkitSERV; Cleary; Argus; Professor Darrell Duffie; Coalition for Derivatives End-Users; Barclays; API; and AGA.

reporting the real-time data for public dissemination since end-users only maintain trading capabilities and associated information technology to meet their current commercial needs.[377] These commenters argue that the burden placed on end-users for reporting end-user to end-user trades (*i.e.,* neither party is an SD or MSP) is not justified by the limited value of the data. These commenters argued that under the Proposing Release end-users would be required to create systems, hire additional personnel and purchase technology, which may compel such end-users to only enter into transactions with SDs and MSPs. According to the commenters, these requirements would hinder the ability of end-users to manage commercial risk and increase their costs, which they would then pass on to their consumers.

Similarly, two commenters argued that data for off-facility swaps involving end-users do not have value for the purposes of price discovery; in their view, the cost burdens to send the swap transaction and pricing data for public dissemination would be substantial.[378] They contend that off-facility end-user swaps should not be subject to Section 727 of the Dodd-Frank Act. One commenter contended that if the Commission were to subject off-facility end-user swaps to real-time reporting requirements, end-users should be allowed to utilize a number of options for compliance with the real-time reporting requirements and only core commercial terms applicable to the swap should be reported.[379]

Two additional commenters similarly argued that until certain other definitions are finalized (*e.g.,* swap, SD, MSP, non-financial commodity), it is premature to comment on the data fields described in appendix A with respect to energy commodity swaps.[380]

One commenter argued that the Commission should follow the approach taken by the SEC in its proposal to allow SDRs to define the relevant fields based on general guidelines so that real-time reporting can be flexible enough to track market trends.[381] Another commenter expressed concern that the SDR may not have sufficient knowledge to identify all information in its possession and could inadvertently disclose the identity of a swap counterparty; the commenter therefore requested more guidance on what should and what should not be publicly disseminated.[382]

Three commenters asserted that credit terms should not be publicly disseminated. One of these commenters contended that the public dissemination of such terms could cause confusion, while the other commenters wrote that public dissemination could have a negative impact since market participants could determine a counterparty's view on the creditworthiness of another counterparty.[383]

Three commenters argued that the public dissemination of an indication that a swap is bespoke could confuse the market since all of the other terms of the bespoke swap that make up the price would not be publicly disseminated.[384] The commenters stated that since the public dissemination of bespoke swaps does not enhance price discovery, such swap transaction and pricing data should not be required to be reported. One commenter suggested that condition flags may be needed in the swaps markets to provide indications of established conventions.[385]

Several commenters addressed specific data fields set forth in appendix A to proposed part 43. The comments on these specific data fields are summarized as follows:

- *Additional Price Notation*—One commenter indicated that the ''Additional Price Notation'' field should not be publicly disseminated since it will provide information on one party's creditworthiness to another party.[386] Another commenter argued that the ''Additional Price Notation'' data field is likely to have little application for most commodity transactions and that it will be challenging to compute and populate such field in real-time.[387] Another commenter stated that the pricing and separate display of an ''Additional Price Notation'' data field could make the price of publicly reported swaps more meaningful; however, the commenter cautioned that the implementation of a standardized approach for calculating the amount in the ''Additional Price Notation'' data field would be challenging, would take time and could confuse the market if parties took different approaches toward calculating this data field.[388]
- *Tenor*—Three commenters responded to the Commission's request for specific comment regarding whether date information (*i.e.,* tenor information) should be rounded to the nearest month.[389] One of the commenters stated that in illiquid markets, the rounding of tenor would be necessary to protect anonymity of parties to a trade. The commenter further suggested that with respect to illiquid foreign exchange markets, the tenor could map to one or two years, rather than to a specific month and year. Another commenter argued that public dissemination should follow market conventions for reporting. Yet another commenter stated that by not reporting the actual tenor of the swap, one of the primary economic terms of the swap would be manipulated and would therefore reduce post-trade price transparency.
- *Timestamp*—Commenters argued that requiring that the timestamp be reported to the second is not reasonable and not consistent with current market practice.[390] One commenter argued that the value derived of moving the industry to UTC appears minimal when compared to the costs involved.[391]
- *Notional Amount*—One commenter stated that reporting the notional amount in total dollar value for commodities provides little value in terms of price discovery value in the market.[392] Therefore, the commenter recommended that the reporting of notional quantity in the units of the underlying quantity would provide more relevant information. Similarly, another commenter suggested that since there is not a universal definition of notional amount, the Commission should provide guidelines on how to publicly disseminate notional amount similar to the guidelines provided by the Federal Reserve Bank of New York (''FRBNY'').[393] Another commenter

[377] *See* CL–COPE; CL–IECA.

[378] *See* CL–Coalition of Energy End-Users; CL–IPAA.

[379] *See* CL–Coalition of Energy End-Users.

[380] *See* CL–NFPEEU; CL–Coalition of Energy End-Users.

[381] *See* CL–MarkitSERV.

[382] *See* CL–ABC/CIEBA.

[383] *See* CL–Coalition for Derivatives End-Users; CL–Working Group of Commercial Energy Firms; and CL–ISDA/SIFMA.

[384] *See* CL–DTCC; CL–FHLBanks; and CL–Reval.

[385] *See* CL–MarkitSERV.

[386] *See* CL–ISDA/SIFMA. The ISDA and SIFMA joint comment letter further argued that bilaterally executed trades may contain a premium over market which would also need to be excluded from public dissemination to prevent the price from being misinterpreted by market observers.

[387] *See* CL–Working Group of Commercial Energy Firms.

[388] *See* CL–MarkitSERV.

[389] *See* CL–Working Group of Commercial Energy Firms; CL–GFXD; and CL–ISDA/SIFMA.

[390] *See, e.g.,* CL–ISDA/SIFMA; CL–Working Group of Commercial Energy Firms.

[391] *See* CL–ISDA/SIFMA.

[392] *See* CL–Working Group of Commercial Energy Firms.

[393] *See* CL–ISDA/SIFMA. The FRBNY's guidelines are included under ''Line Item Instructions for Derivatives and Off-Balance Sheet Items Schedule HC–L'' in the Board of Governors of the Federal Reserve System's ''Instructions for Preparation of Consolidated Financial Statements for Bank Holding Companies Reporting Form FR Y–9C,'' available at *http://www.federalreserve.gov/reportforms/forms/FR_Y-9C20110630_i.pdf* (last visited Nov. 9, 2011).

argued that the notional amount field should not be publicly disseminated for non-standardized swaps.[394]

• *Indication of Other Price Affecting Terms*—One commenter argued that this field, which applies only to non-standardized or bespoke ''reportable swap transactions,'' should be deleted and only price and volume should be required, if anything, for bespoke swaps. The commenter further argued that there would be little price discovery value in reporting this field.[395] Another commenter suggested that the Commission require that certain condition flags be publicly disseminated with respect to bespoke transactions that would provide market participants and the public with more information about the bespoke swap.[396]

• *Price-Forming Continuation Data*—Commenters stated that novations and partial novations should not be ''reportable swap transactions'' since they do not have a material impact on the primary economic terms of the transaction.[397]

• *Contract Type*—One commenter suggested that the ''Contract Type'' data field be modified to delete ''options'' (to the extent the Commission is referring to physical options) and ''forwards'' given that the Commission has no jurisdiction over physical transactions.[398]

One commenter emphasized the importance of maintaining flexibility in the data fields described in appendix A to proposed part 43, which may mean that no information at all may be reported for certain fields.[399] In contrast, another commenter recommended that the data elements be made more specific to provide clarity and avoid the risk of inconsistencies when specifying the data elements.[400] Four commenters recommended that a standardized data format be required for the reporting and public dissemination of swap transaction and pricing data. These four commenters argued that a single data format would maximize efficient and cost-effective access to the information by the greatest number of users.[401]

Several commenters also requested that the Commission and the SEC harmonize the data fields that are required to be publicly disseminated so that there can be an accurate depiction of prices within the same asset classes.[402]

The Commission received comments discussing the ''Swap Instrument'' data field. The Commission is not including this data field in appendix A to part 43, as it intends to address this concept in the block trade re-proposal. Additionally, one commenter interpreted that Table A2 would only relate to embedded options and as a result the primary economic terms for options were not covered by appendix A to part 43.[403]

After considering the comments, the Commission has determined to adopt appendix A to proposed part 43 as described below.

The Commission agrees with concerns expressed by some commenters regarding the costs and burdens that end-users will face in reporting the data fields described in appendix A to proposed part 43. Accordingly, the Commission is adopting data fields in appendix A to part 43 that provide sufficient flexibility for reporting both standardized and bespoke swap transactions in all asset classes. While the Commission recognizes that there will be costs associated with reporting the data fields described in appendix A to part 43, the Commission does not believe that a distinction should be made for swaps in which an end-user is a reporting party. The Commission believes that swaps with similar characteristics must have the same standards for public dissemination, regardless of the type of reporting party, so that identical data fields will be publicly disseminated for similar swaps. Such consistency in public dissemination will provide market participants and the public with uniform public reporting and enhanced transparency and price discovery. To the extent that non-SD/non-MSPs are reporting parties, these parties may use industry solutions, such as third-party reporting agents or web-based data reporting, to assist in reporting such swap transaction and pricing data to an SDR.[404] The Commission believes that industry solutions, combined with the longer initial time delays for public dissemination,[405] the flexibility of the data fields and the flexibility of the meaning of ''as soon as technologically practicable'' [406] will mitigate the costs that may be incurred by non-SD/non-MSP reporting parties.

The Commission disagrees with commenters that stated that off-facility end-user swaps should not be publicly disseminated or alternatively should be permitted to report less information than the data fields required in appendix A to part 43. As noted in the previous discussion related to the scope of part 43,[407] the Commission interprets CEA section 2(a)(13)(C) to cover all swap transactions, including bespoke swaps. The Commission nonetheless recognizes that there are differences among various types of swap transactions based on asset class and whether a swap is subject to mandatory clearing, standardized or bespoke. As further discussed below, the Commission believes that the reporting of swap transaction and pricing data for bespoke transactions, including off-facility end-user transactions, enhances price discovery by bringing transparency to the market. Requiring that certain data fields be reported—such as ''Indication of Other Price Affecting Term'' and ''Additional Price Notation''—adds value to the swap transaction and pricing data that is publicly disseminated without compromising the anonymity of the swap counterparties. It is possible that some of the data fields listed in Tables A1 and A2 in appendix A to part 43 may not be relevant to the terms of a particular publicly reportable swap transaction and therefore need not be publicly disseminated. However, to the extent that a data field for a particular swap is a relevant term of the publicly reportable swap transaction, the reporting party, SEF or DCM must provide the SDR with sufficient information to publicly disseminate such swap transaction and pricing data.

The Commission notes that the data fields described in appendix A to part 43 only reflect data that is to be publicly disseminated by an SDR. The Commission has added introductory language to appendix A to part 43 to clarify that reporting parties, SEFs and

[394] *See* CL–MFA.

[395] *See* CL–Working Group of Commercial Energy Firms.

[396] *See* Meeting with Markit (June 26, 2011).

[397] *See* Meeting with Barclays (January 24, 2011); CL–Working Group of Commercial Energy Firms.

[398] *See* CL–Working Group of Commercial Energy Firms.

[399] *See* CL–GFXD.

[400] *See* CL–ISDA/SIFMA.

[401] *See* CL–Barclays; CL–DTCC; CL–TriOptima; and CL–Better Markets.

[402] *See* CL–ISDA/SIFMA; CL–DTCC; CL–Committee on Capital Markets Regulation; and CL–MarkitSERV.

[403] *See* CL–GFXD.

[404] The Commission notes that CEA section 2(a)(13)(F) explicitly permits that agents to the parties to a swap may report swap transaction and pricing information: ''Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.'' *See supra* § 43.3 discussion, which discusses the use of third parties for reporting and public dissemination.

[405] *See supra* discussion in section II.E (''Section 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data'').

[406] *See supra* discussion in section II.B.2 (''Defined Terms'').

[407] *See supra* discussion in section II.A, regarding the scope of part 43.

DCMs must report to an SDR ''as soon as technologically practicable'' after execution of the publicly reportable swap transaction, the swap transaction and pricing data that is needed to publicly disseminate the relevant data fields described in Tables A1 and A2.

The Commission acknowledges the comment that it is premature to comment on the data fields described in appendix A to proposed part 43 since certain definitions have not been finalized; however, the Commission disagrees that the absence of such definitions would preclude an interested party from commenting on the data fields in appendix A to proposed part 43. Further, in response to similar comments, the Commission previously re-opened the comment period for the Proposing Release so that market participants and interested parties would have an opportunity to comment after seeing the entire mosaic of proposed rules.[408] The Commission did not receive any additional comments on the proposed data fields during the re-opened comment period.

The Commission sees merit in the suggestion that SDRs have discretion to determine how to publicly disseminate data fields. As discussed, § 43.3(a) requires that all swap transaction and pricing data be reported by reporting parties, SEFs and DCMs to an SDR for public dissemination. Accordingly, the Commission anticipates that the SDRs will have discretion to publicly disseminate the swap transaction and pricing data in a form and manner that covers all of the information described in appendix A to part 43. The introductory language to appendix A to part 43 now makes clear that the form and manner in which an SDR publicly disseminates information should be consistent for swaps within a particular asset class. Such consistency will better enable market participants to compare prices for swaps within the same asset class. The data fields listed in appendix A to part 43 are intended to be informative and flexible to accommodate all types of publicly reportable swap transactions. Additionally, appendix A to part 43 provides examples of how each data element may be publicly disseminated. These examples are not meant to be prescriptive and may not be applicable to certain types of swaps. The Commission believes that part 43 and appendix A to part 43 provide sufficient guidance to SDRs regarding information that should and should not be publicly disseminated. With respect to the public dissemination of swap transaction and pricing data related to certain off-facility swaps in the ''other commodity'' asset class, the Commission intends to provide further guidance in its block trade re-proposal.[409]

The Commission agrees with commenters that separate data fields that represent creditworthiness should not be publicly disseminated. The Commission does not agree, however, that reporting the value of creditworthiness as part of the ''Additional Price Notation'' data field, as stated in the Proposing Release, will disclose the business transactions or market positions of any person. Creditworthiness is one of several factors that would comprise the amount set forth in the ''Additional Price Notation'' field. In the description of the ''Additional Price Notation'' data field in the Proposing Release, the Commission stated that the field should include any premiums associated with, among other things, margin, collateral and independent amounts. To clarify, the actual amounts of variation margin and initial margin would not be included in this field; rather, any premiums associated with the presence of collateral that are factored into the price of the publicly reportable swap transaction would be included. The Commission believes that an indication whether an uncleared swap is collateralized should be publicly disseminated to provide greater meaning to the price of the swap in lieu of a separate field for creditworthiness. The Commission is therefore requiring that the margin, collateral and independent amount terms be reported as a separate field entitled ''Indication of Collateralization.'' The ''Indication of Collateralization'' field is only required for uncleared swaps, as, unlike cleared swaps, uncleared swaps have collateral arrangements. The inclusion of the ''Indication of Collateralization'' data field in the final rule requires that reporting parties for uncleared swaps must provide the SDR with the appropriate information so that the SDR can publicly disseminate one of four descriptions of the terms of the swap relating to the collateral arrangement for such swap. The four descriptions to be publicly disseminated are as follows:

(1) ''Uncollateralized''—An uncleared swap shall be described as ''Uncollateralized'' when there is no credit arrangement between the parties to the swap or when the agreement between the parties states that no collateral (neither initial margin nor variation margin) is to be posted at any time.

(2) ''Partially Collateralized''—An uncleared swap shall be described as ''Partially Collateralized'' when the agreement between the parties states that both parties will regularly post variation margin. The word ''regularly'' is used to exclude situations where the parties may set a threshold amount(s) that is so high that one or both parties will rarely post variation margin, if at all.

(3) ''One-way Collateralized''—An uncleared swap shall be described as ''One-way Collateralized'' when the agreement between the parties states that only one party to such swap agrees to post initial margin, regularly post variation margin or both with respect to the swap. The word ''regularly'' is used to exclude situations where the parties may set a threshold amount(s) that is so high that one or both parties will rarely post variation margin, if at all.

(4) ''Fully Collateralized''—An uncleared swap shall be described as ''Fully Collateralized'' when the agreement between the parties states that initial margin must be posted and variation margin must regularly be posted by both parties. The word ''regularly'' is used to exclude situations where the parties may set a threshold amount(s) that is so high that one or both parties will rarely post variation margin, if at all.

The Commission does not agree that the public dissemination of bespoke swaps will confuse the market or fail to enhance price discovery. The public dissemination of bespoke swaps provides the public with the full scope of publicly reportable swap transactions that are being transacted in an asset class, which will inform market participants and the public of market depth and the execution of swaps with similar underlying assets. In the Commission's opinion, the designation of such swaps as ''bespoke'' in the ''Indication of Other Price Affecting Term'' data field (and the ''Additional Price Notation'' and ''Indication of Collateralization'' data fields) will provide information that enhances price discovery. While the Commission agrees with the comment that condition flags may provide greater clarity to the market as to the pricing of a bespoke swap, such indications may also disclose the identities, business transactions and/or market positions of the parties. Further, the Commission believes that the ''Additional Price Notation,'' ''Indication of

[408] *See* Commission, Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 25274 (May 4, 2011).

[409] *See supra* discussion in section II.D.5 (''Anonymity of Parties to a Publicly Reportable Swap Transaction (§ 43.4(d))'').

Collateralization'' and the ''Indication of Other Price Affecting Term'' data fields will provide sufficient information to the market to enhance price discovery with respect to these types of publicly reportable swap transactions.

The Commission is modifying or adding certain data fields in response to comments received.

• *Additional Price Notation*—The Commission believes that the Additional Price Notation field will not disclose the creditworthiness of the counterparty as one commenter suggested. This data field provides a single number that accounts for the combined premiums associated with the publicly reportable swap transaction. The actual content of what constitutes this number will not be publicly disseminated. As discussed earlier, the references to margin, collateral and independent amount are being replaced in the description of this field with the term ''presence of collateral.'' Additionally, the description of this data field in the final rule makes clear that ''counterparty credit risk'' would be included as part of the number. With respect to the comment that the Additional Price Notation field will have little application to commodity transactions, the final rule provides that to the extent that this data field does not apply, the data field would not need to be publicly disseminated.

The Commission does not anticipate that computing this field should be difficult, even for transactions in the ''other commodity'' asset class. The price of the swap should be known and the premium or spread is generally negotiated outside of the actual price of the swap. The Commission believes that the comment that a standardized approach for calculating the amount in the Additional Price Notation field would be challenging to achieve has merit. The Commission acknowledges that this field may be calculated slightly differently in different asset classes, by different swap counterparties, and even within the same asset class. Notwithstanding these potential discrepancies in the calculation of the ''Additional Price Notation'' data field, the Commission believes that breaking out the premiums for a swap would enhance price discovery and allow for better comparison for all swaps within an asset class—both platform executed swaps and off-facility swaps.

• *Tenor*—In response to comments regarding whether tenor should be reported as month and year, the Commission agrees with the commenter who stated that to not report the exact tenor of a swap would essentially mean not reporting a primary economic term of the swap. To not require the exact end date of swap would detract from the meaning of the price and therefore the Commission is requiring that the actual end date be required to be publicly disseminated for all swaps. The field that was called ''Tenor'' in the Proposing Release will be called ''End Date'' and the time between the ''Effective or Start Date'' and the ''End Date'' will provide market participants and the public with the exact tenor of the swap. Similarly, the ''Option Expiration Date'' field should be reported as an actual date and not the month and year, as described in the Proposing Release.

• *Execution Timestamp*—While the Commission understands that the reporting of the timestamp to the second is a shift from the standard practice in the previous OTC derivatives market, the Commission does not believe that this historical practice is persuasive on the point of whether swaps under the new regulatory regime established by the Dodd-Frank Act should receive execution timestamps to the second. A timestamp to the second is necessary for both audit trail and enforcement purposes, as well as to allow market participants and the public an opportunity to re-create a trading day. Different market participants and different types of execution may receive different time delays, so the timestamp will become critical in determining the order of execution of transactions within a particular market. The Commission will also use the timestamps to determine whether swaps are being reported by reporting parties, SEFs and DCMs ''as soon as technologically practicable'' and to compare the speed at which similar market participants report swap transaction and pricing data to an SDR for public dissemination. Additionally, the Commission can use the timestamp to determine how quickly SDRs are publicly disseminating the information that they receive for public dissemination. Further, SDRs will use the Execution Timestamp to measure the time delays for public dissemination to be applied to publicly reportable swap transactions, as described in § 43.5 and appendix C to part 43.

A commenter suggested that the benefit of moving the industry to UTC appears minimal when compared to the costs involved. The Commission believes that consistency across the global swaps market is important and requiring public dissemination in UTC will allow market participants and reporting parties to re-create the order of trades and will reduce the need for market participants to convert different times to understand the order of trades in a particular market.[410] Further, the appendix A to part 43 combines the ''Execution Date'' field to be included in the ''Execution Timestamp'' field so that both a time and date will be publicly disseminated to assist market participants and the public with understanding the trading of publicly reportable swap transactions.

• *Notional or Principal Amount*—The Commission agrees with the comment that the notional quantity should be reported and publicly disseminated in the units of the underlying quantity, as it would provide more relevant information to enhance price discovery. The Commission, however, does not believe that the Commission needs to provide guidelines on how to publicly disseminate the notional or principal amount. The Commission believes that the SDR should have the discretion on how to publicly disseminate the notional amounts for certain types of commodity transactions that are traded in units. The Commission does not agree with the comment that the notional amount should not be disseminated for non-standardized swaps, as such public dissemination will enhance price discovery and provide information on market depth. The final rules provide for the rounding of the notional or principal amount as well as caps on the public dissemination of notional or principal amounts.[411] Accordingly, the data fields in appendix A to part 43 indicate that it is the ''Rounded Notional or Principal Amount'' that is to be publicly disseminated.

• *Indication of Other Price Affecting Term*—One commenter argued that the ''Indication of Other Price Affecting Term'' data field should not be reported and only price and volume information should be reported for bespoke ''reportable swap transactions.'' The Commission intends that this data field will merely serve as an indication that a swap is not standardized (*i.e.,* bespoke). The Commission believes that such indication will provide market participants and the public with an opportunity to more easily discern the differences in prices of bespoke swaps with those swaps that are standardized (*e.g.,* executed on a SEF or DCM and subject to the clearing mandate). An indication of other price affecting terms will allow market participants and the

[410] The use of UTC with regard to part 43 only refers to the execution timestamps that are publicly disseminated; reporting parties, SEFs and DCMs can agree to report different timestamps to the SDR that can then convert the time to UTC for public dissemination.

[411] *See* § 43.4(g) and (h).

public to look to other fields such as ''Indication of Collateralization,'' ''Additional Price Notation'' and ''Day Count Convention'' to better understand the price of the swap. The Commission has deleted the reference to common material price affecting terms to avoid confusion and has added a description under the example to indicate that the field should be utilized if there is a material price affecting term that is not otherwise publicly disseminated.

• *Price-Forming Continuation Data*—The Commission agrees that novations and partial novations should not be publicly reportable swap transactions, but only to the extent that such swaps do not have a material effect on the price of the swap. To the extent there is any price effect from the novation (*e.g.,* payments associated with the novation, changes to material terms of the swap, etc.), such novations would be publicly reportable swap transactions and an indication of the type of price forming continuation data would need to be publicly disseminated pursuant to part 43. The final rule clarifies the types of transactions that may be included in the price forming continuation data field to match with the types of transactions in the definition of publicly reportable swap transaction.[412]

• *Contract Type*—In response to the comment that options and forwards should be deleted to the extent they relate to physical transactions, the Commission does not believe that any action is necessary regarding the data field. The extent to which certain products fall under the Commission's jurisdiction will be defined in another Commission rulemaking. To that end, the list is meant to be illustrative and to ensure that all publicly reportable swap transactions would be included to the extent that they are under the Commission's jurisdiction.

In response to the comment that Table A2 only applies to embedded options, the Commission notes that Table A2 applies to options, swaptions and embedded options; the Commission has added clarifying language to the description.[413]

It is the Commission's intent to ensure harmonization between the data fields in appendix A to proposed part 43 and the data fields required to be reported to an SDR for regulatory purposes. In light of the changes to proposed § 43.3 that require reporting to an SDR, which in turn must publicly disseminate the data fields described in appendix A to part 43, the Commission believes that reporting parties, SEFs and DCMs may report the data elements for real-time reporting and regulatory reporting in the same data stream. Accordingly, it is important that the data fields for both the real-time and regulatory reporting requirements work together. Further, certain changes to the final rules make the public dissemination of additional data fields important to provide market participants and the public with an understanding of the swap. For these reasons, the Commission is adding to appendix A the following data fields that were not included in the Proposing Release:

• *Indication of End-User Exception*—Given the other changes in the final rules regarding the time delays for public dissemination, such indication is necessary to provide market participants and the public with information as to why such swap received a time delay for public dissemination as compared to other swaps with substantially similar terms. Additionally, such information would be required to be reported pursuant to the regulatory reporting requirements described in proposed part 45, thus reducing the cost for reporting parties to provide such information.[414]

• *Day Count Convention*—The day count convention is a description of how interest accrues over time and is a material term that is necessary for pricing certain swaps. Common day count convention methods include the 30/360 method and the Actual method. The day count convention is necessary to be publicly disseminated so that the public can better understand the price and the terms for how to value the swap.

• *Settlement Currency*—The settlement currency is a necessary data field for foreign exchange transactions that physically settle. To the extent that such transactions are subject to the real-time reporting requirements of part 43, this field should be publicly disseminated to give meaning to the price of a publicly reportable swap transaction. The field would be required to be reported pursuant to the regulatory reporting requirements in proposed part 45, thus reducing the cost for reporting parties to provide such information.[415]

All other data fields in appendix A to part 43 that are not discussed above are adopted as proposed with certain clarifying or conforming changes and certain changes to ensure that the language in the description is not unduly prescriptive. Some of the conforming or clarifying changes include matching changes to definitions and section numbers, describing the examples with a parenthetical and clarifying certain names of fields (*e.g.,* ''Notional or principal amount 1'' has been changed to ''Rounded notional or principal amount 1'' since only the rounded notional amount will be publicly disseminated, and changed the name of ''Start Date'' to ''Effective or Start Date'' for clarity). Additionally, the Commission has removed certain language from the descriptions of the data fields that might have been construed as prescriptive. For example, the final rule removed ''[s]uch letter convention may be reported as follows: D (daily), W (weekly), M (monthly), Y (yearly)'' from the payment frequency data fields to make clear that payment frequency may be publicly disseminated in a different manner as long as an SDR is consistent in the way that data fields are publicly disseminated. With respect to the ''Execution Venue'' data field, the Commission has made clear that the actual SEF or DCM name need not be reported. Further, the Commission has modified the ''Price Notation'' field to clarify that this field indicates the price (and not the premium), and the language relating to netting to a present value of zero at execution was removed since it might not be true in all cases.

The Commission has also added clarification to the examples described for each data element. These examples are meant to provide guidance with respect to the public dissemination of swap transaction and pricing data.

In response to commenters who recommended that the Commission harmonize the data fields with the SEC, the Commission notes that it has consulted with the SEC regarding the data fields for public dissemination. The Commission believes that the data fields described in appendix A to part 43 are sufficiently flexible to cover swaps in all asset classes. The Commission has determined that the data elements described in Tables A1 and A2 of appendix A to part 43 are necessary to enhance price discovery.

[412] *See* entry for ''price forming continuation data'' in Table A1 (''Data Fields and Suggested Form and Order for Real-Time Public Reporting of Swap Transaction and Pricing Data'') in appendix A to this part. *See* Real-Time NPRM *supra* note 6, at 76179. Such price-forming continuation data may include: terminations, assignments, novations, exchanges, transfers, amendments and conveyances of extinguishing of rights that change the price of the swap.

[413] The Commission notes that the title of Table A2 in the Proposing Release was ''Additional real-time public reporting data fields for options, swaptions and swaps with embedded options.'' Real-Time NPRM *supra* note 6, at 76181.

[414] *See* 75 FR 76574.

[415] *Id.*

III. Effectiveness/Implementation and Interim Period

In its Proposing Release the Commission solicited responses to specific questions regarding the implementation of real-time public reporting, including whether (i) different reporting parties should have different implementation timeframes; (ii) different types of execution should have different reporting phase in timeframes; (iii) different asset classes, markets, or contracts should have different timeframes; and (iv) public dissemination of block trades should be implemented according to a different schedule than non-block trades.

The Commission received responsive comments from 47 market participants, including SDs, non-financial end-users, financial end-users, industry groups/associations, asset managers, trading platforms and data vendors.[416] Commenters discussed the following issues relating to implementation: (1) Timing for real-time reporting vis-a-vis other rules; (2) a phase in approach based on liquidity/standardization/asset class; (3) harmonization with the SEC and foreign regulators; (4) implementation schedules; (5) a testing phase; (6) technology challenges; (7) comparison to TRACE phase in; (8) large notional swaps/customized swaps; (9) end-users should be phased in last; and (10) re-proposal and re-open comment period.

Twenty-seven comments supported a phase in approach with regard to real-time reporting requirements for the rules set forth in the Proposing Release. Commenters' proposed approaches to phasing in the rules varied in timing and scope. One commenter further suggested that a phase in be adopted similar to that proposed in the SD/MSP Recordkeeping NPRM.[417] Five commenters recommended that in implementing the part 43 rules the Commission follow the manner in which FINRA phased in TRACE;[418] some supported a testing phase in period during which compliance would not be required.[419] These commenters further suggested that such a phase in period would provide an opportunity to both address anticipated technology challenges and allow parties to become familiar with the reporting process. Other comments advised the Commission to subject more liquid/standardized contracts to public real-time reporting first and phase in less liquid contracts later.[420] Still others recommended beginning with reporting of more advanced asset classes with established infrastructure for reporting (*e.g.,* credit) or by entity/market participants.[421] In addition, commenters stated that real-time reporting for large notional swaps should be phased in.[422]

Twenty-six commenters contended that the Commission must first collect and analyze data per the Commission's data recordkeeping and reporting and SDR registration rules, before adopting final rules addressing certain aspects of the block trade rules (*e.g.,* calculations and time delay).[423] Consistent with this approach, four commenters asserted that the entire rulemaking should be re-proposed after the Commission has had the opportunity to review and analyze the data collected by SDRs. One commenter requested that the Commission wait until it publishes the standardized computer-readable algorithmic study before developing real-time reporting rules.[424] One commenter urged the Commission to re-propose this rule, and all other rules establishing the new framework for swaps regulation, in the order in which they will be implemented—preferably starting with data gathering in order to capture most effectively the appropriate products and market participants. This commenter recommended a minimum sixty-day comment period for each of the re-proposed rules. While this process would delay implementation by some months, the commenter believed that the desire for an accelerated and/or premature regulatory certainty should not outweigh the need for comprehensive consideration of the market impact and potential market disruptions prior to finalizing the regulatory requirements.[425]

Several commenters stated that the Commission should adopt an implementation timeline similar to those of other federal regulators, including the SEC.[426] One commenter observed that inconsistencies between the Commissions' proposals would, if adopted, significantly complicate implementation.[427] Two additional commenters recommended that the Commissions harmonize their phase in approaches.[428]

The Commission received comments from several commenters that recommended specific implementation schedules for the Commission's consideration.[429]

One of these comments supported re-proposing the rule after data are collected.[430] As discussed throughout this Adopting Release, the Commission has determined not to adopt certain aspects of the block trade rules pending further collection and analysis of data.

One commenter stated that the Commission's implementation period and process should be broadly consistent with the proposed European implementation; in its view such consistency would foster consistency across regions and minimize regulatory arbitrage.[431]

The Commission also received several comments asserting that end-user swap data reporting should be delayed. For example, one of these commenters commented that non-bank SDs and end-users should be able to establish information technology systems related to business process for approximately one year before reporting is required.[432] Another commenter stated that end-users should not begin reporting until an SDR has been registered and the systems between the SDR and end-user can be set up and tested.[433] Other comments contended that end-users should be phased in last.[434]

A number of other commenters responded, directly or indirectly, to the Commission's decision to reopen the comment periods for all Dodd-Frank Act rulemakings and specific request for comment on the order in which the Commission should consider final rulemakings under the Dodd-Frank

[416] The Commission received comments specifically addressing the implementation of part 43 and additionally received general implementation comments in response to the Public Roundtable Discussion on Dodd-Frank Implementation.

[417] *See* CL–ISDA/SIFMA.

[418] *See* CL–ISDA/SIFMA; CL–DTCC; CL–GFXD; CL–WMBAA; and CL–Cleary.

[419] *See* CL–Barclays; CL–Committee on Capital Markets Regulation; CL–DTCC; CL–Cleary; and CL–Working Group of Commercial Energy Firms.

[420] *See* CL–UBS; CL–Barclays; and CL–DTCC.

[421] *See* CL–Barclays; CL–AIMA; and CL–MarkitSERV.

[422] *See* CL–JPM; CL–MS.

[423] Commenters include: Barclays; GS; UBS; Cleary; Freddie Mac; FHL Banks; MFA; GFXD; ISDA/SIFMA; Better Markets; ABC/CIEBA; SIFMA AMG; WMBAA; Coalition for Derivatives End-Users; FIA/SIFMA/ISDA/FSR; AII; Vanguard; MarkitSERV; JPM; ATA; MFA; WMBAA; Vanguard; MS; and SIFMA AMG.

[424] *See* CL–Cleary.

[425] *See* CL–ABA. As discussed throughout this Adopting Release, the Commission has determined not to adopt certain rules relating to block trades and other off-facility swaps in the ''other commodity'' asset class in this Adopting Release.

[426] *See* CL–MFA; CL–UBS; CL–Reval; and Meeting with Markit (Jan. 13, 2011).

[427] *See* CL–Cleary.

[428] *See* CL–Commodity Markets Council; and CL–MarkitSERV.

[429] *See* CL–DTCC; CL–ABC–CIEBA; and CL–Working Group of Commercial Energy Firms.

[430] *See* CL–ABC/CIEBA.

[431] *See* CL–MarkitSERV.

[432] *See* CL–Working Group of Commercial Energy Firms.

[433] *See* CL–Dominion.

[434] *See* CL–Dominion; CL–DTCC; and CL–Working Group of Commercial Energy Firms.

Act.[435] Six commenters challenged the sequencing and timing of the Proposing Release in relation to the publication of the final entity and/or product definitions rulemakings published after the Proposing Release. These commenters contended that the Commission's failure to sequence the proposals deprived them of the opportunity for meaningful, informed comment on the Proposing Release; they suggested that the Commission extend the comment periods on all rulemakings.

Consistent with section 754 of the Dodd-Frank Act, part 43 of the Commission's Regulation will be effective on March 9, 2012 (''Effective Date''). In that regard, however, the Commission wishes to emphasize that implementation or compliance dates for various regulatory requirements in part 43 are contingent upon the adoption and effective dates of other, related, regulatory provisions and definitions. In consideration of these contingencies and in response to commenters, the Commission is adopting a three-phase schedule for compliance with part 43, along with several new procedures.

Compliance Date 1

On the first compliance date (''Compliance Date 1''), all SEFs, DCMs, SDs and MSPs will be required to comply with all part 43 requirements with respect to publicly reportable swap transactions in the interest rate and credit asset classes, including reporting such transactions to an SDR pursuant to the rules of part 43. On Compliance Date 1, all publicly reportable swap transactions in the interest rate and credit asset classes that are either (1) executed on or pursuant to the rules of a SEF or DCM, or (2) ''off-facility swaps'' in which at least one party to the swap is an SD or MSP (collectively, ''Compliance Date 1 transactions''), must be reported to an SDR for public dissemination, pursuant to part 43. In addition, on Compliance Date 1, all SDRs for the interest rate and credit asset classes will be required to accept and publicly disseminate real-time swap transaction and pricing data for the Compliance Date 1 transactions pursuant to part 43 and appendix A to part 43. With respect to swaps in the interest rate and credit asset classes that are executed on or pursuant to the rules of a SEF or DCM, Compliance Date 1 will be the date that is the later of (1) July 16, 2012, or (2) 60 calendar days after the publication in the **Federal Register** of Commission regulations defining the term ''swap'' pursuant to sections 721 and 712(d)(1) of the Dodd-Frank Act. With respect to swaps in the interest rate and credit asset classes that are not executed on or pursuant to the rules of a SEF or DCM and that have at least one party that is an SD or MSP, Compliance Date 1 will be the date that is the later of (1) July 16, 2012 of this Adopting Release in the **Federal Register**, or (2) 60 calendar days after the publication in the **Federal Register** of the last Commission regulations defining the terms ''swap,'' ''swap dealer'' and ''major swap participant'' pursuant to sections 721 and 712(d)(1) of the Dodd-Frank Act.

Compliance Date 2

On the second compliance date (''Compliance Date 2''), all SEFs, DCMs, SDs and MSPs will be required to comply with all part 43 requirements with respect to publicly reportable swap transactions in the foreign exchange, equity and ''other commodity'' asset classes, including reporting such transactions to an SDR pursuant to the rules of part 43. On Compliance Date 2, all publicly reportable swap transactions in the foreign exchange, equity and ''other commodity'' asset classes that are either (1) executed on or pursuant to the rules of a SEF or DCM, or (2) off-facility swaps in which at least one party to the swap is an SD or MSP (collectively, ''Compliance Date 2 transactions''), must be reported to an SDR for public dissemination, pursuant to part 43. Consequently, on Compliance Date 2, all SDRs for the interest rate, credit, equity, foreign exchange and ''other commodity'' asset classes will be required to accept and publicly disseminate the Compliance Date 2 transactions pursuant to part 43. Compliance Date 2 shall begin 90 calendar days after the commencement of Compliance Date 1.

Compliance Date 3

On the third compliance date (''Compliance Date 3'') all publicly reportable swap transactions in all asset classes will be required to comply with all part 43 requirements. Compliance Date 3 will require, among other part 43 requirements, the reporting and public dissemination of all publicly reportable swap transactions in all asset classes by all SEFs, DCMs and reporting parties, including reporting parties that are non-SDs or non-MSPs. Compliance Date 3 shall begin 90 calendar days after the commencement of Compliance Date 2.

If no SDR for a particular asset class is registered or provisionally registered at the commencement of one or more compliance dates, compliance for swaps in such asset class shall not be required until registration or provisional registration of an SDR occurs in the asset class. Reporting parties, SEFs and DCMs may share and publicly disseminate swap transaction and pricing data without restriction until an SDR is registered or provisionally registered in an asset class. Further, the Commission notes that the compliance dates relating to the implementation of part 43 are not contingent on the publication of Commission regulations implementing Section 733 of the Dodd Frank Act relating to registration and compliance with core principles for SEFs.

In addition to the compliance dates, the Commission is adopting a number of phasing procedures in response to commenters' concerns. As discussed above, the Commission expects to re-propose for comment a rulemaking to address the appropriate minimum block size criteria and determination. Consequently, until such time as an appropriate minimum block size is established for particular swaps, the Commission is providing initial time delays for all swaps subject to the reporting requirement in § 43.5. Further, the Commission will be phasing in the time delays over time so that market participants can adjust hedging strategies and secure the technology or make arrangements necessary to comply with part 43. The Commission has provided longer time delays for the ''other commodity'' asset class, since such parties using such swaps tend to follow more complex hedging strategies to lay off risk. In response to comments regarding end-users, the Commission is providing longer time delays for public dissemination of swaps in which a non-SD/non-MSP is the reporting party since such parties may not have the technology available to report swap transaction and pricing data. Additionally, the Commission expects to address in the block trade re-proposal the reporting of publicly reportable swap transactions in the ''other commodity'' asset class that are not executed on or pursuant to a SEF or DCM and that do not reference one of the contracts listed in appendix B to part 43 or a swap that is economically related to such contracts. Until rules regarding such ''other commodity'' swaps are adopted, such swaps will not be subject to the real-time reporting requirements of part 43.

[435] *See* CL–ABA; CL–ABC/CIEBA; CL–COPE; CL–Citadel; CL–DC Energy; CL–BP; CL–Alice; CL–FHLBanks; CL–Cleary; CL–GFXD; CL–NFPEEU; CL–Working Group of Commercial Energy Firms; CL–FIA/FSR/IIB/IRI/ISDA/SIFMA/Chamber; and Meeting with Citi, MS and JPM (May 17, 2011).

IV. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[436] This final rulemaking contains information collection requirements. 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 control number issued by the Office of Management and Budget (''OMB''). The Commission submitted its proposing release and supporting documentation to OMB for review, and requested that OMB approve, and assign a new control number for, the collections of information covered by the Proposing Release, both in an information collection request associated with this rulemaking and the part 49 rulemaking that would establish requirements for SDRs. The Commission invited the public and other federal agencies to comment on any aspect of the information collection requirements discussed in the Proposing Release.

The Commission received comments from two interested parties on its burden estimates or on other aspects of the information collection requirements contained in its Proposing Release. One commenter asserted that the actual burden imposed on end-users to report swap data was significantly higher than the Proposing Release's estimate, and suggested that the actual burden would be several orders of magnitude higher than the Commission estimated.[437] This same commenter said that the Commission failed to estimate the financial impact that would be imposed on the swap industry because of this rule, particularly those costs associated with end-users.[438] Another commenter stated that when promulgating rules and estimating costs, the Commission should take into consideration ''issues of scale in participants and volumes.''[439]

OMB issued a notice of action providing that the Commission should examine the comments received and submit a revised supporting statement, including ''a description of how the agency has responded to any public comment on the [information collection request], including comments on maximizing the practical utility of the collection and minimizing the burden.''[440]

The title for the collection of information under part 43 is ''Real-Time Public Reporting of Swap Transaction Data.'' OMB has assigned OMB control number 3038–0070 to this collection of information, but OMB is withholding its approval of this collection of information pending the submission of the revised supporting statement. The Commission has revised some of its assumptions and estimates as a result of changes in the requirements imposed by part 43 and after considering the comments received. The revised estimates are being submitted to OMB and can be found in the updated form 83–I and supporting statement, which can be found at *http://www.reginfo.gov/public/do/PRAMain.*

The Proposing Release described the new collections of information in terms of four broad categories of requirements: Reporting, public dissemination, recordkeeping and determining appropriate minimum block size. As further described below, the Commission revised some of its estimates regarding the reporting, public dissemination and recordkeeping estimates from the Proposing Release. The Commission notes that part 43 does not require an SDR to determine an appropriate minimum block size.[441] Additionally, part 43 no longer permits a SEF, DCM or reporting party to report swap transaction and pricing data to a third-party service provider for purposes of satisfying the public dissemination obligations under part 43 (*i.e.,* all real-time swap data must be reported to an SDR for public dissemination).

A. Burden Estimates for Reporting Requirements

The Commission estimated in the Proposing Release that annual hourly burdens for SEFs and DCMs to report swap transaction and pricing data to a real-time disseminator would be approximately 2,080 hours per SEF and DCM. In addition, the Commission anticipated there would be 40 SEFs and 17 DCMs who may be required to report pursuant to part 43's obligations.[442]

For those swaps executed off-facility, the Proposing Release estimated the reporting burdens associated with SDs and MSPs to be approximately 2,080 annual burden hours. In the Proposing Release, the Commission took ''a conservative approach'' to calculating the burden hours for this information collection by estimating that as many as 250 SDs and 50 MSPs would register.[443] Since publication of the Proposing Release in November 2010, the Commission has had ample opportunity to meet with industry participants and trade groups, to discuss extensively the universe of potential registrants with the National Futures Association (''NFA''), and to review public market information about dealers active in the market and certain trade groups. Over time, and as the Commission has gathered more information on the swaps market and its participants, the estimated number of SDs and MSPs has decreased. In its FY 2012 budget drafted in February 2011, the Commission estimated that 140 SDs might register with the Commission.[444] After recently receiving additional specific information from NFA on the regulatory program it is developing for SDs and MSPs,[445] however, the Commission believes that approximately 125 Swaps Entities, including only a handful of MSPs, will register. Therefore, the information collection's proposed total burden hour estimate of 624,000 burden hours for SDs and MSPs will decrease to 260,000 burden hours, assuming there are 125 respondents and no adjustments to the response times for the registration forms.

When an off-facility swap is executed and neither an SD nor MSP is a counterparty (*e.g.,* an end-user to end-user swap), the reporting responsibility would fall on one of the end-users to the swap.[446] For that reason, the Commission estimated that the total number of swap end-users that would be required to report their swap

[436] 44 U.S.C. 3501 *et seq.*

[437] *See* CL–Dominion.

[438] *Id.;* The Commission notes that its estimates regarding the costs related to ''collections of information'' required by the Proposing Release can be found in the supporting statement and form 83–I posted on the Office of Management and Budget's Web site, which can be found at *http://www.reginfo.gov/public/do/PRAMain.* The revised supporting statement and form 83–I can be found at the same Web site.

[439] *See* CL–GXFD.

[440] CL–OMB Notice of Action (received 04/01/11).

[441] Rules related to block trades and large notional off-facility swaps will be addressed in a separate rulemaking.

[442] At the time of the Proposing Release there were 17 DCMs; there are now 18 DCMs.

[443] 75 FR 76169.

[444] CFTC, President's Budget and Performance Plan Fiscal Year 2012 (Feb. 2011), p. 13–14, *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cftcbudget2012.pdf.* The estimated 140 SDs includes ''[a]pproximately 80 global and regional banks currently known to offer swaps in the United States;'' ''[a]pproximately 40 non-bank swap dealers currently offering commodity and other swaps;'' and ''[a]pproximately 20 new potential market makers that wish to become swap dealers.'' *Id.*

[445] Letter from Thomas W. Sexton, Senior Vice President and General Counsel, NFA to Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, CFTC (Oct. 20, 2011) (NFA Cost Estimates Letter).

[446] Part 43 no longer uses the term end-user, but uses the term ''non-SD/non-MSP'' to represent a reporting party who is not an SD or MSP.

transaction and pricing data would be 1,500 entities or persons.[447] The Commission estimated that swap end-users (*i.e.,* non-SD/non-MSPs) would expend four (4) annual burden hours per reporting party or person, for a total of 6,000 aggregate annual burden hours.[448]

In the Proposing Release, the Commission assumed that end-users who would be required to report pursuant to part 43 would contract with a third party to satisfy their obligations. However, as one commenter indicated, some end-users may choose not to contract with a third party, but will build infrastructure and hire personnel for purposes of reporting swap transaction and pricing data to an SDR.[449]

After consideration of the comments received and further discussions with the Commission's technology experts, the Commission is retaining its estimates related to SEFs, DCMs, SDs and MSPs reporting burdens, but is revising its estimates as they relate to non-SDs/non-MSPs reporting burdens. The Commission cannot estimate with precision the number of non-SDs/non-MSPs that will be obligated to report under this rule, how many will conduct their own reporting or contract with a third party, or how many transactions they will have to report. Moreover, there will be significant deviations in reporting burdens on a reporting party-by-reporting party basis, based upon the type and transactional activity of each individual reporting party.

Consequently, of the estimated 30,000 non-SDs/non-MSPs who will transact in the swaps markets, the Commission is estimating that only 1,000 non-SDs/non-MSPs will be required to report in a year.[450] Of those 1,000 non-SDs/non-MSPs, the Commission continues to believe a majority, estimated now at 75%, will contract with third parties to satisfy their reporting obligations. For those non-SDs/non-MSPs who are required to report swap transaction and pricing data to an SDR and contract with a third party, the Commission estimates that such non-SDs/non-MSPs will expend 22 annual burden hours per reporting party or entity for reporting errors and omissions. Thus, the Commission estimates that 750 non-SDs/non-MSPs that will contract with a third party will expend a total of 16,500 aggregate annual burden hours complying with the reporting requirements.[451]

Conversely, for the 250 non-SDs/non-MSPs that the Commission estimates will not contract with a third party, the Commission estimates such non-SDs/non-MSPs will expend 676 annual burden hours per reporting party or entity, for a total of 169,000 aggregate annual burden hours.

B. Burden Estimates for Public Dissemination Requirements

Proposed § 43.3 required an SDR to publish, through an electronic medium, swap transaction and pricing data received from reporting parties as soon as technologically practicable, unless such publicly reportable swap transaction is subject to a time delay. Moreover, SDRs would be required to receive and publicly disseminate real-time swap transaction and pricing data at all times, 24-hours a day. The Commission estimated that there would be approximately 15 SDRs.[452] In its Proposing Release, the Commission estimated that compliance with the public dissemination requirements would cause an SDR to expend 6,900 annual burden hours, resulting in estimated aggregate annual burden hours of 103,500 for all SDRs. The Commission received no comments on its proposed public dissemination estimates, and the Commission is not revising them.

C. Burden Estimates for Recordkeeping Requirements

Under proposed § 43.3(i), SEFs and DCMs (an estimated 57 entities or persons),[453] SDRs (an estimated 15 entities or persons) and reporting parties would be required to retain all data relating to a reportable swap transaction for a period of not less than five years following the time at which such reportable swap transaction is publicly disseminated in real-time. With respect to SEFs, DCMs and real-time disseminators, the Commission estimated in the Proposing Release that the proposed recordkeeping requirement would be 250 annual burden hours per SEF, DCM and SDR. The Commission anticipated that 1,500 swap end-users would be reporting parties for the purposes of this part of the Commission's regulations. Since the Commission anticipated that there would be lower levels of activity relating to the requirement for swap end-users, the Commission estimated that there would be two (2) annual burden hours per swap end-user.

Commenters on the substantive aspects of the proposed rulemaking argued that these recordkeeping requirements were duplicative of existing Commission regulations and provisions of other proposed rulemakings. In consequence, these recordkeeping requirements have been omitted from the final rulemaking, and thus the Commission will be withdrawing the burden estimates associated with them.

The only remaining recordkeeping requirements retained from the Proposal Release are the timestamping requirements in § 43.3(h). Specifically, timestamps will be required for all publicly reportable swap transactions and must be applied by SEFs, DCMs, SDRs, SDs and MSPs. Non-SDs/non-MSPs who are required to report will not be obligated to comply with the timestamping requirements. Accordingly, the Commission is revising downward the estimated burden associated with recordkeeping.

For the estimated 57 SEFs and DCMs who must comply with the timestamping requirements with respect to receipt of certain swap transactions and transmission of all transactions, which the Commission expects will be conducted electronically, the Commission estimates 25 annual burden hours per entity, which accounts for any system programming that may be required and periodic maintenance, for an aggregate of 1,425 annual burden hours. For the estimated 300 SDs and MSPs who must comply with the timestamping requirements only on transmission, which the Commission also expects to be conducted electronically, the Commission estimates that such entities will expend 20 annual burden hours per entity, for an aggregate of 6,000 annual burden hours. Finally, for the estimated 15 SDRs who must comply with the

[447] In the Proposing Release, the Commission requested comment on the number of swap end-users that would be required to report their swap transaction and pricing data pursuant to proposed Section 43.3. The Commission estimated that there would be a total of 30,000 swap market participants and that 1,500 of those participants would engage in end-user-to-end-user swap transactions (5% of 30,000) requiring at least one of those participants to report such swap transaction and pricing data.

[448] This estimate included the expectation that end users who participate in end-user-to-end-user swaps will contract with other entities to report the swap transaction and pricing data to an SDR or third-party service provider.

[449] *See* CL–Dominion.

[450] This is a change from the Proposing Release which estimated that 1,500 end-users (5% of 30,000) would be required to report swap transaction and pricing data to an SDR or third-party service provider.

[451] Non-SDs/non-MSPs reporting parties that contract with a third party to report swap transaction and pricing data to an SDR may still be required to submit corrected data to a SEF, DCM or SDR when they become aware of an error or omission.

[452] Because the Commission has not regulated the swap market, the Commission was unable to collect data relevant to the Proposing Release's estimates. For that reason, the Commission requested comment on these estimates.

[453] *See supra* note 442.

timestamping requirements on the receipt of transaction data as well as on its public dissemination, the Commission estimates that such entities will have 76 annual burden hours per entity, for an aggregate of 1140 annual burden hours.

D. Cost Burden

In addition to the hour burdens identified above, reporting parties, SEFs or DCMs where swaps are executed, and SDRs that must accept and ensure the public dissemination of real-time swap transaction and pricing data in their selected asset class will incur cost burdens in connection with reporting, public dissemination and recordkeeping obligations.[454] The direct, quantifiable costs imposed on reporting parties, SEFs and DCMs will take the forms of (i) non-recurring expenditures in technology and personnel; and (ii) recurring expenses associated with systems maintenance, support, and compliance.

Although the Commission is retaining the cost burden estimates described in connection with the Proposing Release in substantial part, after reviewing comments received and consulting with market participants, the Commission has revised some of these estimates.[455] Specifically, the Commission has revised its wage rate calculation from the wage rate used to calculate cost burdens in the Proposing Release.[456] Additionally, the Commission has revised its cost burden estimates with respect to non-SD/non-MSP reporting parties. With respect to the cost burden estimates related to such non-SD/non-MSP reporting parties, the Commission has assumed a non-financial end-user lacking the technical capability and other infrastructure to comply with the part 43 requirements as the reference point for its cost burden estimates—in other words, a new market entrant with no prior swaps market participation or infrastructure. Further, the Commission has revised its estimates with respect to recordkeeping requirements, since part 43 now only requires recordkeeping with respect to timestamps. SDs, MSPs, non-SDs/non-MSPs, SEFs, DCMs and SDRs will incur initial and recurring costs, including capital and start-up costs related to reporting and public dissemination of swap transaction and pricing data pursuant to part 43. The Commission did not receive comments regarding the cost burden estimates for initial non-recurring costs for reporting with respect to SDs, MSPs, SEFs, DCMs and SDRs. The Commission is therefore retaining its estimates that the initial non-recurring costs for each SD, MSP, SD, SEF and DCM to be $300,000; however, the Commission has estimated that, annualized over a useful life of 6 years, and accounting for the total operational cost per year associated with these initial non-recurring costs, the annual total cost of these initial non-recurring costs will be $200,000.[457]

With respect to non-SDs/non-MSPs, the Commission estimates that the initial non-recurring costs for its reference point, a non-financial end-user that does not contract with a third party to report swap data (''non-financial end-user''), will likely consist of (i) developing an internal Order Management System (''OMS'') capable of capturing all relevant swap data in real-time; (ii) establishing connectivity with an SDR that accepts data; (iii) developing written policies and procedures to ensure compliance with part 43; and (iv) compliance with error correction procedures. Based on comments received and meetings with market participants, the Commission estimates that many non-financial end-users will likely engage in swap transactions in only one asset class.[458] Accordingly, for purposes of estimating relevant cost burdens, the Commission estimates that a non-financial end-user will establish connectivity with one SDR.[459] The Commission estimates that the total initial non-recurring costs to each non-financial end-user to be $56,369.[460] Further, if non-SDs/non-MSPs utilize a third party to assist in reporting real-time swap transaction and pricing data to an SDR, the Commission estimates the initial non-recurring costs per non-SD/non-MSP to be $2,063.

The recurring cost burden estimates with respect to reporting and public dissemination of real-time swap transaction and pricing data have been revised from the estimates provided in connection with the Proposing Release, with respect to SDRs, SDs, MSPs, SEFs, DCMs and non-SDs/non-MSPs. The revisions to the cost burden estimate for recurring costs associated with reporting and public dissemination for SDRs have been adjusted to take into account the changes to the wage rate calculation. Accordingly, the Commission estimates the aggregate annual recurring costs for reporting and public dissemination for SDRs to be $23,255,210.[461]

The Commission has also revised its cost burden estimate for recurring costs for SEFs, DCMs, SDs and MSPs with respect to reporting and public dissemination. These estimates have been revised to take into account changes in the estimates for the number of entities, as well as changes to the wage rate calculation. Accordingly, the

[454] SDRs may pass on costs of public dissemination through equitable and non-discriminatory fees to the real-time reporting market participants. *See* § 43.3(i).

[455] As the Commission noted in the Proposing Release, the supporting statement submitted in connection with the proposal may be obtained by visiting RegInfor.gov. *See* Real-Time NPRM *supra* note 6, at 76170.

[456] In so doing, the Commission at times has utilized wage rate estimates based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). These wage estimates are derived from an industry-wide survey of participants and thus reflect an average across entities; the Commission notes that the actual costs for any individual company or sector may vary from the average.

The Commission estimated the dollar costs of hourly burdens for each type of professional using the following calculations:

[(2009 salary + bonus) * (salary growth per professional type, 2009–2010)] = Estimated 2010 total annual compensation.] The most recent data provided by the SIFMA report describe the 2009 total compensation (salary + bonus) by professional type, the growth in base salary from 2009 to 2010 for each professional type, and the 2010 base salary for each professional type; thus, the Commission estimated the 2010 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2010 to 2011 and beyond, did not estimate dollar costs beyond 2010.

[(Estimated 2010 total annual compensation)/(1,800 annual work hours)] = Hourly wage per professional type.]

[Hourly wage) * (Adjustment factor for overhead and other benefits, which the Commission has estimated to be 1.3)] = Adjusted hourly wage per professional type.]

[(Adjusted hourly wage) * (Estimated hour burden for compliance)] = Dollar cost of compliance for each hour burden estimate per professional type.]

The sum of each of these calculations for all professional types involved in compliance with a given element of part 43 represents the total cost for each reporting party, SD/MSP, SEF, DCM or SDR, as applicable to that element of part 43.

[457] The capital and start-up costs for part 43's reporting requirements for high activity respondents is estimated as 5% of the entity's estimated average total capital and start-up cost of $6 million.

[458] *See, e.g.,* CL–NFPEEU.

[459] Depending on the number of swap asset classes in which a reporting party transacts (or that a SEF or DCM lists), and the number of SDRs that accept the resulting swap transaction and pricing data in such asset class, multiple connections to different SDRs may be necessary or desirable. As the regulatory structure develops and the swap markets evolve, the average number of SDR connections established and maintained by each reporting party, registered SEF and DCM may be different and fluid.

[460] The aggregate estimate represents the sum total of the following initial non-recurring costs: [$26,689 for 355 personnel hours to develop an internal order management system] + [$12,824 for 172 burden hours to establish connectivity with an SDR] + [$14,793 for 180 burden hours to develop written policies and procedures to comply with reporting requirements of part 43] + [$2,063 for 26 burden hours to establish a program for reporting errors and omissions] = $56,369.

[461] This estimate is the aggregate annual cost burden for 15 SDRs, including the costs for burden hours, operational costs and annualized capital and start-up costs.

Commission estimates the aggregate annual recurring costs for reporting and public dissemination for SEFs to be $17,245,242.[462] Additionally, the Commission estimates the aggregate annual recurring costs for reporting and public dissemination for DCMs to be $7,760,359.[463] Further, the Commission estimates the aggregate annual recurring costs for reporting and public dissemination for SDs/MSPs to be $28,891,383.[464]

With respect to non-SDs/non-MSPs, the Commission estimates that the recurring cost burdens for a non-financial end-user will likely consist of (i) capturing swap transaction and pricing data in a manner sufficient to comply with part 43; (ii) maintaining connectivity to an SDR; (iii) maintaining compliance and operational support programs; and (iv) reporting of errors and omissions. The Commission estimates the aggregate annual recurring costs for reporting and public dissemination for a non-financial end-user to be $45,159,000.[465] Further, if non-SDs/non-MSPs utilize a third party to assist in reporting real-time swap transaction and pricing data to an SDR, the Commission estimates the aggregate annual recurring costs for reporting and public dissemination for such non-SD/non-MSP reporting parties to be $2,056,500.[466]

In addition to the costs burdens associated with reporting and public dissemination, part 43 imposes costs on SDRs, SDs, MSPs, SEFs and DCMs with respect to recordkeeping.[467] These estimated cost burdens have been adjusted downward from the estimates associated with the Proposing Release since the part 43 rules only require recordkeeping in connection with timestamps. The Commission estimates the total aggregate non-recurring and recurring costs for recordkeeping as follows:[468] $93,855 for SDRs; $328,000 for SDs/MSPs; $157,440 for SEFs; and $70,848 for DCMs.

Accordingly, the estimated aggregate cost burden for all market participants to comply with part 43 is $150,017,837.00.[469]

For further information relating to the revised cost burden estimates, please refer to the updated form 83–I and supporting statement submitted to OMB, which can be found at *http://www.reginfo.gov/public/do/PRAMain.*

V. Cost-Benefit Considerations

A. Introduction

The swaps markets, which have grown exponentially in recent years, are now an integral part of the nation's financial system. As the financial crisis of 2008 demonstrated, the absence of transparency in the swaps markets can pose systemic risk to this system.[470] In part, the Dodd-Frank Act seeks to promote the financial stability of the United States by improving financial system accountability and transparency. More specifically, Title VII of the Dodd-Frank Act directs the Commission to promulgate regulations to increase swaps markets' transparency and thereby reduce the potential for counterparty and systemic risk.[471]

Transaction reporting is a fundamental component of the legislation's objective to reduce risk, increase transparency, and promote market integrity within the financial system generally, and the swaps market in particular. Title VII designates the Commission to oversee the swaps markets and develop appropriate regulations. Specifically, section 727 of the Dodd-Frank Act amends the Commodity Exchange Act by inserting new section 2(a)(13), which requires that swap transaction and pricing data be made publicly available. The Dodd-Frank Act specifies that swap price and volume data be reported to the public as soon as technologically practicable after the swap has been executed, *i.e.,* real-time public reporting, and at the same time requires that public dissemination not identify the participants to the swap transaction.[472]

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[462] This estimate is the aggregate annual cost burden for 40 SEFs, including $100,000 per DCM to maintain connectivity to an SDR, costs for burden hours, operational costs and annualized capital and start-up costs.

[463] This estimate is the aggregate annual cost burden for 18 DCMs, including $100,000 per DCM to maintain connectivity to an SDR, costs for burden hours, operational costs and annualized capital and start-up costs. The number of DCMs was changed from 17 to 18 to reflect the designation of an additional contract market since the publication of the NPRM in the **Federal Register**. As of December 13, 2011. *See http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations&implicit=true&type=DCM&CustomColumnDisplay=TTTTTTTT.*

[464] This estimate is the aggregate annual cost burden for 125 SDs/MSPs, including $100,000 per SD/MSP to maintain connectivity to an SDR, costs for burden hours, operational costs and annualized capital and start-up costs.

[465] The cost burden estimate represents the aggregate recurring costs relating to reporting and public dissemination for 250 non-SDs/non-MSPs that do not utilize third parties at a total estimated cost of $180,636 per non-SD/non-MSP. The estimated cost per non-SD/non-MSP represents the sum total of [$27,943 for 436 burden hours for capturing swap transaction and pricing data] + [$13,747 for 218 burden hours for maintenance of compliance and operational support programs] + [$1,366 for 22 burden hours to report errors and omissions] + [$100,000 to maintain connectivity to an SDR] + [$28,185 for operational costs] + [$9,395 for annualized capital and start up costs].

[466] This cost burden estimate represents the aggregate recurring costs relating for reporting and public dissemination requirements for 750 non-SDs/non-MSPs that utilize a third party for reporting requirements pursuant to part 43. The Commission recognizes that these costs may vary based on the level of swap activity by a non-SD/non-MSP.

[467] Non-SDs/non-MSPs do not have any recordkeeping obligations pursuant to part 43.

[468] The Commission estimates 15 SDRs, 125 SDs/MSPs, 40 SEFs and 18 DCMs.

[469] $150,017,837.00 (total) = $23,349,065 (SDRs) + $54,219,383 (SDs and MSPs) + $17,402,682. (SEFs) + $7,831,207. (DCMs) + $45,159,000 (RP Non-SD/non-MSP) + $2,056,500 (RP non-SD/non-MSP that contracts with a third party).

[470] As the U.S. Senate Committee on Banking, Housing, and Urban Affairs explained concerning the 2008 financial crisis:

Information on prices and quantities [in ''over-the-counter,'' or ''OTC,'' derivatives contracts] is opaque. This can lead to inefficient pricing and risk assessment for derivatives users and leave regulators ill-informed about risks building up throughout the financial system. Lack of transparency in the massive OTC market intensified systemic fears during the crisis about interrelated derivatives exposures from counterparty risk. These counterparty risk concerns played an important role in freezing up credit markets around the failures of Bear Stearns, AIG, and Lehman Brothers.

S. Rep. No. 111–176, at 30 (2010). More specifically with respect to credit default swaps (''CDSs''), the Government Accountability Office found that ''comprehensive and consistent data on the overall market have not been readily available,'' that ''authoritative information about the actual size of the CDS market is generally not available,'' and that regulators currently are unable ''to monitor activities across the market.'' Government Accountability Office, Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps, GAO–09–397T (March 2009) at 2, 5, 27.

[471] *See* Congressional Research Service Report for Congress, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010); Dep't of the Treasury, Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation 1 (June 17, 2009) at 47–48.

[472] CEA section 2(a)(13)(B) authorizes the Commission to ''make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.'' CEA sections 2(a)(13)(C) and (E) authorize and require the Commission ''to provide by rule for the public availability of swap transaction and pricing data.'' These provisions specify that the rules shall, with respect to the swaps that are subject to the clearing mandate (or excepted from such mandate pursuant to CEA section 2(h)(7)) or that are voluntarily cleared, provide for the ''real-time public reporting'' of such transactions in a manner that: (1) Preserves swap counterparty anonymity; (2) takes into account whether the public dissemination will materially reduce market liquidity; and (3) specifies the appropriate criteria and time delays for reporting large notional swaps (block trades). With respect to certain uncleared swaps, CEA section 2(a)(13)(C)(iii) requires that the rules require real-time public reporting for such transactions in a manner that does not disclose the business transactions and market positions or any person. CEA section 2(a)(13)(A) defines ''real-time public reporting'' as ''to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.'' In addition, section 721(b) of the Dodd-Frank Act authorizes the Commission to define certain terms added to the CEA by the Dodd-Frank Act, including the term ''as soon as technologically practicable.''

In promulgating part 43 of its regulations, the Commission implements Congress' mandate that swap transaction and pricing data be made available to the public in real-time. Together, the statute and Commission's rules promote transparency and enhance price discovery while protecting the anonymity of market participants.[473] Part 43 achieves the statutory objectives of transparency and enhanced price discovery by, *inter alia,* requiring that market participants ultimately report swap transaction and pricing data to an SDR[474] and by requiring SDRs to ensure the public dissemination of such data in real time.[475] The Commission expects that the increased transparency achieved by the increased availability of pricing information will enhance the price discovery process and improve financial market systemic risk management. In the sections that follow, the Commission considers the costs and benefits of part 43 as required by CEA section 15(a).

1. Background

CEA section 15(a) requires the Commission to consider the costs and benefits of its actions in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[476] The Commission, in its discretion, may give greater weight to any one of the five enumerated areas and may determine that, notwithstanding costs, a particular rule protects the public interest.

To the extent that these new rules reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those mandated by Congress in passing the legislation. However, the rules may generate costs and benefits attributable to the Commission's determinations regarding implementation of the Dodd-Frank Act's statutory requirements. Moreover, as this rulemaking is a reporting rule, many of the costs of the rulemaking are associated with collections of information. The Commission is obligated to estimate the burden of and provide supporting statements for any collections of information it seeks to establish under considerations contained in the PRA, 44 U.S.C. 3501 *et seq.,* and to seek approval of those requirements from the OMB. Therefore, the estimated burden and support for the collections of information in this this rulemaking, as well as the consideration of comments thereto, are discussed in the PRA section of this rulemaking and the information collection requests filed with OMB as required by that statute. Otherwise, the costs and benefits of the Commission's determinations are considered in light of the five factors set forth in CEA section 15(a).

To aid in fulfilling its statutory responsibility to consider the costs and benefits of its proposed rules, the Commission sought comment on its proposed rulemaking for a period of 60 days, and specifically requested that commenters submit any data or other information quantifying or qualifying the costs and benefits of the proposal with their comment letters. The Commission received approximately 60 comments addressing the costs and benefit considerations of the proposed rule, which addressed primarily regulatory alternatives and the costs associated with the proposed information collection requirements, which are covered in the PRA section of this rulemaking and in the supporting statements that were filed and will be filed with OMB, as required under that statute. Nevertheless, wherever reasonably feasible, the Commission has endeavored to quantify the costs and benefits of the final rules, and did so in the proposed rule to the extent that the costs of the rulemaking were related to collections of information for which the Commission must account under the PRA. In a number of instances, however, it is not reasonably feasible to quantify, particularly with regard to the benefits of the final rules. Where quantification is not feasible, the Commission has considered the costs and benefits of the final rule in qualitative terms.

In the paragraphs the follow, the Commission, after explaining its cost estimation methodology, discusses the economic effects of part 43 along the two major drivers of the costs and benefits of the rulemaking: (1) Reporting and public dissemination; and (2) recordkeeping and timestamping.

2. Cost Estimation Methodology

The Commission recognizes that the costs of complying with part 43 are largely attributable to reporting, the costs for which are covered in the Commission's PRA analysis, as required by that statute. With respect specifically to SDRs, the Commission has estimated their incremental costs to comply with the real-time reporting and public dissemination requirements of this rulemaking above the base operating costs reflected in a separate rulemaking and the PRA analysis associated with it.[477] The Commission expects SDRs to recover these incremental costs in the form of fees assessed on reporting parties, SEFs and DCMs for use of the SDRs' public dissemination services.[478]

B. Reporting and Public Dissemination Requirements of Part 43

CEA section 2(a)(13)(F) provides the Commission with the authority to determine the reporting requirements for parties to a swap. Consistent with this authority, § 43.3(a)(2) provides that a reporting party satisfies its obligation to report real-time swap transaction and pricing data when it executes a swap on or pursuant to the rules of a SEF or DCM. In turn, § 43.3(b)(1) requires SEFs and DCMs to report data related to publicly reportable swap transactions to an SDR for public dissemination. For ''off-facility swaps,''[479] § 43.3(a)(3) establishes a protocol for determining counterparty responsibility to report real-time swap transaction and pricing data to an SDR.[480] Further, § 43.3(c)(2) specifies that an SDR must accept and publicly disseminate swap transaction and pricing data in real-time for all swaps in its selected asset class, unless otherwise prescribed by the Commission.[481] Thus, depending on the place of execution and the counterparties to a swap, the reporting obligation may fall on a SEF, DCM, SD, MSP, or a non-SD/non-MSP.

CEA section 2(a)(13)(D) provides that ''[t]he Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.'' Pursuant to this authority, the Commission is adopting

[473] Part 43 covers all swaps under the Commission's jurisdiction (*i.e.,* interest rate, foreign exchange, equity, credit and ''other commodity''), cleared and uncleared, regardless of the method of execution (*e.g.,* executed on a SEF, DCM or bilaterally negotiated).

[474] Section 43.3(a)(1) states that for purposes of part 43, a ''registered swap data repository'' shall include swap data repositories that are provisionally registered pursuant to the Commission's part 49 rules.

[475] Section 43.4 and appendix A to part 43 specify the data an SDR is required to publicly disseminate. Consistent with its obligations under the statute, the Commission considered whether the public dissemination of such data would compromise the anonymity of the parties to a swap, or would disclose the business transactions and market positions of any party to an uncleared swap.

[476] 7 U.S.C. 19(a).

[477] *See* SDR Final Rule. 76 FR 54538 at 54572.

[478] Section 43.3(i) authorizes an SDR to charge fees to persons reporting the real-time data, so long as such fees are equitable and non-discriminatory.

[479] The term ''off-facility swap'' is defined in § 43.2.

[480] Such responsible counterparty would be the ''reporting party,'' as defined in § 43.2.

[481] *See* discussion regarding § 43.3(c)(2).

rules requiring an SDR to ensure the public dissemination of all swap transaction and pricing data it accepts pursuant to part 43. Specifically, § 43.3(b)(2) requires an SDR to ensure that swap transaction and pricing data for all publicly reportable swap transactions within an asset class are publicly disseminated as soon as technologically practicable, unless the transaction is subject to a time delay described in § 43.5. In addition, § 43.4(b) prescribes the manner in which an SDR must publicly disseminate the data to comply with part 43.[482]

1. Benefits of the Reporting and Public Dissemination Requirements

The Commission anticipates that part 43 will generate several overarching, if presently unquantifiable, benefits to swaps market participants and the public generally. These include: Improvements in market quality; price discovery; improved risk management; economies of scale and greater efficiencies; and improved regulatory oversight.

The Commission believes these benefits, made possible by the public dissemination of comprehensive and timely swap transaction data, will accrue to market participants in a number of ways:

- Enhanced price discovery made possible by the comprehensive and timely swap transaction data that the part 43 requires be reported and publicly disseminated.
- Enhanced ability to manage risk as a result of the greater visibility into swap market risk pricing, made possible by the comprehensive and timely swap transaction data that the part 43 requires be reported and publicly disseminated.
- Enhanced swap market price competition made possible by the comprehensive and timely swap transaction data that the part 43 requires be reported and publicly disseminated.[483]
- Market price transparency provides a check against SDs or other market participants trading at noncompetitive prices; provides post-trade information market participants may use to negotiate lower transaction costs; and facilitates price competition between swap dealers.
- More robust risk monitoring and management capabilities as a result of the systems required under part 43 which, concurrent with real-time reporting capability, will monitor the participant's current swap market position.
- New tools to process transactions at a lower expense per transaction attributable to the systems required under part 43. These tools will enable participants to handle increased volumes of swaps with less marginal expense, or existing volumes of swaps with greater efficiency.
- Furthers the development of internationally recognized standards for the financial services industry by utilizing UTC.

Transaction reporting and public dissemination under part 43 also benefits the public generally by supporting the Commission's supervisory function over the swaps market, as well as the broader supervisory responsibilities of U.S. financial regulators to protect against financial market systemic risk. Real-time public reporting provides a means for the Commission to gain a better understanding of the swaps market—including the pricing patterns of certain commodities. The public dissemination of swap transaction and pricing data will further enable the Commission, market participants and the public to observe the effects of transparency on the swaps markets.

Public dissemination of swap transaction and pricing data will enhance the Commission's ability to detect anomalies in the market. For example, the availability of such data in real-time will help Commission monitor the markets subject to its jurisdiction.

Transparency facilitated by real-time transaction reporting also will help provide a check against a reoccurrence of the type of systemic risk build-up that occurred in 2008, when ''the market permitted enormous exposure to risk to grow out of the sight of regulators and other traders [and d]erivatives exposures that could not be readily quantified exacerbated panic and uncertainty about the true financial condition of other market participants, contributing to the freezing of credit markets.'' [484]

While the Commission believes that part 43 will yield significant benefits to the public and swaps market participants, the Commission acknowledges that the final rules will entail costs. As discussed more fully below, the Commission is mindful of the costs of its rules and has carefully considered comments regarding the same. To the extent possible and consistent with the statutory and regulatory objectives of this rulemaking, the Commission has incorporated comments presenting cost-mitigating alternatives.

2. Costs of the Reporting and Public Dissemination Requirements

The Commission has not identified quantifiable costs of data collection that are not associated with an information collection subject to the PRA. These costs therefore have been accounted for in the PRA section of this rulemaking and the information collection requests filed with OMB, as required by the PRA.

3. Reporting and Public Dissemination: Consideration of Studies, Alternatives and Cost-Mitigation

i. Studies

Several commenters cited economic or academic studies in their comment letters or submitted studies relating to the introduction of transparency resulting from the public reporting of trade data.[485] The comments and studies generally discussed the effects of transparency on liquidity and the costs to market participants.

None of these studies explicitly address the issue of market transparency as it pertains to the real-time public dissemination of swap transaction and pricing data and as adopted in part 43. Five of the studies cited by commenters addressed issues that were tangential to the issue of market transparency as it relates to part 43, since they did not analyze the effects of market transparency directly. One study identified, and differentiated among, a number of related concepts of market quality that fall under the umbrella of ''liquidity.'' [486] One commenter analogized the benefits of transparency to the financial sector and the reticence of market participants to acknowledge those benefits to the energy and industrial sector of the early 1970s, citing a study that addressed the

[482] Section 43.4(b) provides ''Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information described in appendix A to this part.''

[483] Congress recognized the competitive pricing benefit of real-time information in the related context of swap exchange trading. *See* S.Rep. No. 111–176, at 34 (2010) (''the relative opaqueness of the OTC market implies that bid/ask spreads are in many cases not being set as competitive as they would be on exchanges''') (quoting Stanford University Professor Darrel Duffie).

[484] Congressional Research Service Report for Congress, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, by Mark Jickling and Kathleen Ann Ruane (August 30, 2010).

[485] At least six commenters cited at least 13 studies by institutional, academic and industry professionals. *See, e.g.,* CL–JPM; CL–Better Markets; CL–ATA; CL–FINRA; CL–Cleary; and CL–ISDA/SIFMA.

[486] *See* Kyle, Albert S., Continuous Auctions and Insider Trading, *Econometrica* 53, no. 6 (1985): 1315–1335. This study is also cited in Bessembinder *et al.* (2008). *See infra* note 497. *See also,* CL–JPM.

benefits of environmental regulation to the energy and industrial sectors.[487] One cited study addressed the manner in which airlines use jet fuel swaps to hedge risk.[488] Another addressed the impacts of high-frequency trading on the marketplace, which the commenter cited in a discussion of high frequency and algorithmic trading.[489] Another commenter cited a study that addressed differences in reporting obligations in domestic and foreign jurisdictions when discussing the real-time public reporting of cross-border transactions.[490] The remaining studies cited by commenters addressed the general effects of transparency on the marketplace.

One commenter[491] cited five studies that addressed the benefits of the introduction of transparency through the Transaction Reporting and Compliance Engine (''TRACE'') system, which provides the real-time transaction reporting and public dissemination in the corporate bond market.[492] Acknowledged differences between the swaps market and the corporate bond market notwithstanding, the Commission believes that to the extent the study discusses the benefits of transparency in the corporate bond market, such benefits may be relevant to the discussion of transparency in the swaps market. One study of TRACE cited by the commenter suggests that, according to transaction data, the transaction costs of bonds fell following the introduction of transparency to the corporate bond market.[493] Another study suggests that the implementation of TRACE played a part along with other factors in reducing the dispersion of the valuation of corporate bonds.[494] The commenter cited another study that suggests that post-trade transparency alone, while less beneficial than the full transparency (pre-trade and post-trade) offered by exchanges, could serve as a partial substitute for the price transparency offered by exchanges. This study further stated that the implementation of a TRACE-like price reporting system could ''offer substantial improvements in market efficiency'' for many actively-traded derivative products.[495]

Another study implied that the implementation of TRACE had either no effect or a positive effect on liquidity for BBB corporate bonds, and that spreads on newly transparent bonds declined relative to bonds that did not experience a change in transparency. The study further implied that additional transparency is not associated with greater trading volume.[496]

Another study discussing TRACE indicated that TRACE presented a number of important benefits to the corporate bond marketplace.[497] As the authors note:

> The results * * * are important because they verify that market design, and in particular decisions as to whether to make the market transparent to the public, have first-order effects on the costs that customers pay to complete trades. Further, since the sample employed * * * consists of institutional trades, these results indicate that public trade reporting is important not only to relatively unsophisticated small traders, but also to professional investors who make multi-million dollar transactions.[498]

In examining the effects of introducing transparency through TRACE, the same authors identify a ''remarkable'' average decrease in execution costs of 50% for TRACE-eligible bonds.[499] Bessembinder *et al.* state that the magnitude of that estimate, which reflects the impact of implementing transparency in the corporate bond market through TRACE, ''emphasizes the potential economic importance of designing market mechanisms optimally.''[500] Indeed, it is entirely plausible that, should a similar savings effect be realized in the swaps markets as a result of real-time public reporting required under part 43, such savings would ultimately be passed on to the end-users of the swaps.

Bessembinder *et al.* further identify a decrease of 20% in the execution costs of non-TRACE-eligible bonds. The authors state that this ''likely reflects a liquidity externality by which better pricing information regarding a subset of bonds improves valuation and execution cost monitoring for related bonds.''[501] The Commission believes it is entirely plausible that a similar savings effect could be realized in the swaps markets as a result of part 43's requirements. Improved pricing information for standardized swaps could improve the pricing of swaps, and thus reduce the transaction costs of non-standardized swaps whose prices could be sufficiently and reliably correlated with the prices of the standardized swaps by market participants.

In a subsequent work,[502] Bessembinder and Maxwell acknowledge that liquidity can refer to a number of related but distinct concepts, but the literature regarding TRACE's effects on the corporate bond market have focused primarily on a single one of these concepts: Customers' trading costs.[503] The study states that ''the cost of trading corporate bonds decreased [following the introduction of TRACE], but so did the quality and quantity of the services formerly provided by bond dealers.''[504] One commenter also stated that this study suggests that the implementation of TRACE reduced the market depth available to institutional customers.[505]

Bessembinder *et al.* state that ''consistent with the reasoning that market makers earned economic rents in

[487] *See* Porter, Michael E., and Claas van der Linde, Green and Competitive: Ending the Stalemate, *Harvard Business Review* 73, no. 5 (1995): 120–134. *See also* CL–Better Markets.

[488] *See* Cobbs, Richard, and Alex Wolf, Jet Fuel Hedging Strategies: Options Available for Airlines and a Survey of Industry Practices (2004). *See also* CL–ATA.

[489] *See* Kirilenko, Andrei, Kyle, Albert S., Samadi, Mehrdad, and Tugkan Tuzun, The Flash Crash: The Impact of High Frequency Trading on an Electronic Market (2011). *See also* CL–Better Markets.

[490] *See* CFTC staff, Derivatives Reform: Comparison of Title VII of the Dodd-Frank Act to International Legislation (2010). *See also* CL–Cleary.

[491] *See* CL–FINRA.

[492] TRACE enables real-time reporting and public dissemination in the corporate bond market. Currently, TRACE requires public dissemination to occur within 15 minutes of the time of execution for most trades. Congress was cognizant of TRACE in passing the Dodd-Frank Act. *See* S. Rep. No. 111–176, at 34 (2010) ('''empirical evidence appearing in the academic literature has not given much support''' to claims of resistant bond dealers that '''more price transparency would reduce the incentives of dealers to make markets and in the end reduce market liquidity''') (quoting Stanford University Professor Darrell Duffie).

[493] *See* Edwards, Amy K., Harris, Lawrence E., and Michael S. Piwowar, Corporate Bond Market Transaction Costs and Transparency, *The Journal of Finance* 62, no. 3 (2007): 1421–1451.

[494] *See* Cici. Gjergji, Gibson, Scott, and John J. Merrick, Working Paper, Missing the Marks? Dispersion in Corporate Bond Valuations Across Mutual Funds (2010).

[495] *See* Duffie, Darrell, Li, Ada, and Theo Lubke, Federal Reserve Bank of New York Staff Reports, Policy Perspectives on OTC Derivatives Market Infrastructure (2010).

[496] *See* Goldstein, Michael A., Hotchkiss, Edith S., and Erik R. Sirri, Transparency and liquidity: A controlled experiment on corporate bonds, *The Review of Financial Studies* 20, no. 2 (2007): 235–273.

[497] *See* Hendrik Bessembinder, William Maxwell, and Kumar Venkataraman, Market transparency, liquidity externalities, and institutional trading costs in corporate bonds, *Journal of Financial Economics* 82 (2006): 251–288. *See also,* CL–Cleary, CL–FINRA, CL–ISDA/SIFMA, and CL–JPM.

[498] *Id.* at 284.

[499] The study indicates that this can be extrapolated by calculating a trading cost reduction of approximately $1 billion across the entire market for TRACE-eligible bonds.

[500] Bessembinder *et al.* at 283.

[501] *Id.*

[502] *See* Bessembinder, Hendrik and Maxwell, William F., Transparency and the Corporate Bond Market, *Journal of Economic Perspectives,* 22, no. 2 (2008): 217–234.

[503] As one commenter noted, ''most studies of TRACE have focused only on its effect on spreads (particularly in smaller transaction sizes) and have not examined its effect on either market depth or resiliency, particularly in the case of large-sized transactions.'' CL–Cleary. *See also supra* note 492.

[504] Bessembinder and Maxwell at 232.

[505] *See* CL–JPM.

the opaque market, or that the costs of market making are lower in the more transparent environment,'' trading costs were reduced for large institutional traders after the implementation of TRACE.[506] With regard to the economic rents earned by market makers in the ''opaque market,'' the authors' findings imply that in an opaque marketplace, dealers are able to extract economic rents from customers, especially less-informed customers, and that these rents are reduced after the introduction of transparency because customers are able to view more pricing information. In addition, the study suggests that introducing transparency could improve the ability of dealers to share risks, which may result in a decrease in inventory carry costs, translating into reduced costs of trading for customers.

The Commission anticipates that, just as trading costs were reduced in the corporate bond market following the implementation of TRACE, the requirements of part 43 will similarly result in reduced trading costs and increased efficiency in the swaps market.

ii. Alternatives and Cost Mitigation

In response to the Commission's Proposing Release, several commenters presented reasonable alternatives. The Commission carefully considered—and where reasonable, adopted—those in an effort to reduce the burden of its regulations while achieving the desired regulatory objective. Other alternatives presented, however, were not accepted because, in the Commission's judgment they would not have achieved the regulatory objectives discussed throughout this rulemaking.

The comments and alternatives presented can be classified along several broad themes: (1) Who reports; (2) what is (and is not) to be reported; (3) when the data is to be reported and made public; (4) how the data is to be reported (*i.e.,* data fields); and (5) phasing of compliance. These categories are discussed in the paragraphs that follow.

Who Reports

Commenters requested that the Commission allow parties to negotiate independently who will report rather than follow the reporting hierarchy for off-facility swaps discussed in the Proposing Release.[507] The Commission accepted this alternative and as adopted § 43.3(a)(3) permits independent negotiation between counterparties of off-facility swaps to determine the reporting party for such swap. The Commission anticipates that the party with the most cost-effective means for reporting will take that role.

The reporting protocol established in § 43.3(a)(3), which requires the SD to report an off-facility swap with a non-SD counterparty when the reporting responsibility is not negotiated, is also cost-mitigating.[508] Section 43.3(a)(2) requires that for any swap executed on or pursuant to the rules[509] of a SEF or DCM, the SEF or DCM—not the transacting party—must report the transaction and pricing data to an SDR for public dissemination.[510] The Commission anticipates that SEFs and DCMs, as part of their registration and ongoing compliance requirements, will be required to have the technological capability to transmit real-time swap transaction and pricing data to SDRs, thus reducing the costs of transmission for persons that execute publicly reportable swap transactions on the SEF or DCM. The Commission further anticipates that SDs and MSPs will be more capable than financial and non-financial end-users of implementing the necessary infrastructure and personnel to comply with part 43, thus reducing the costs of reporting amongst the parties to the transaction.

To further reduce the financial burden of complying with part 43, particularly for end-users, the Commission is allowing reporting parties to contract with a third party—including a DCO that clears the swap—to report the data to an SDR. The Commission recognizes that the use of a third party service provider will likely result in costs to the reporting party. However, the Commission anticipates that the costs to the reporting party will be less burdensome than those that would be incurred by certain non-SD/non-MSP counterparties to establish infrastructure and hire personnel to comply with the part 43 real-time reporting requirements. The Commission does not agree, however, that reporting for all swaps should be required to be processed through a SEF or DCM. Rather, the Commission believes it more efficient to allow flexibility for those capable of directly reporting real-time swap transaction and pricing data to an SDR.

The proposed rule permitted public dissemination to occur through either an SDR or a third-party service provider.[511] The Commission received several comments regarding this aspect of its proposal: Some commenters agreed with the Proposing Release and others thought it would be more appropriate to permit only registered entities to publicly disseminate swap data. One commenter stated that because many DCOs already have the necessary infrastructure and will establish connectivity with SEFs and DCMs, the Commission should require that public dissemination occur through DCOs.[512] There is nothing in part 43 that would prevent a DCO from registering as an SDR[513] and ensuring that swap transaction and pricing data is publicly disseminated, or from operating as a third party; however, the Commission is not requiring that such dissemination occur through DCOs.

What Is (and Is Not) To Be Reported

Commenters expressed concern that the costs of reporting swaps between affiliates would be high.[514] Many of these same commenters asserted that the benefits to reporting swaps between affiliates are minimal or non-existent.[515] Others contended that the public dissemination of swaps between affiliates would distort, rather than enhance, price discovery.[516] To address these concerns, and as discussed previously in sections II.A.2 and II.B.2 of this Adopting Release, the Commission's definition of ''publicly reportable swap transaction'' does not, at this time, include certain swaps that are not arm's length transactions.[517] The Commission further clarified in an example that internal swaps[518] between

[506] Bessembinder *et al.* at 283.

[507] *See* CL–FSR.

[508] As one commenter noted: ''[D]ue to their commercial interests, technological know-how and business relationships, swap dealers and MSPs are more appropriate reporting counterparties than U.S. end-users and are just as, if not more, capable of complying with reporting obligations. * * * In addition, swap dealers and MSPs will be best positioned to develop at the lowest cost the technological infrastructure or relationships with third-party service providers necessary to meet the reporting obligation.'' CL–SIFMA AMG at 2.

[509] Swaps executed ''pursuant to the rules'' of a SEF or DCM would include block trades.

[510] *See* CL–Tradeweb.

[511] *See* Proposed § 43.4(a). 75 FR 76174.

[512] *See* CL–CME.

[513] *See* CEA section 21(a)(1)(B), added by section 728 of the Dodd-Frank Act: ''A derivatives clearing organization may register as a swap data repository.''

[514] *See* CL–Cleary.

[515] *Id.*

[516] *See* CL–Shell.

[517] *See supra* section II.B.2 for a discussion of definition of ''publicly reportable swap transaction'' in § 43.2 and section II.A.1 for a discussion of § 43.1.

[518] As discussed and referenced in this rule, internal swaps between wholly-owned subsidiaries of the same parent entity may include back-to-back swap transactions which are a combination of two or more swap transactions between or among affiliates to help manage the risks associated with a market-facing swap transaction. In general, a back-to-back swap transaction effectively transfers the risks associated with a market-facing swap transaction to an affiliate that was not an original party to such transaction. Back-to-back swap transactions may occur in a number of different

wholly-owned subsidiaries of the same parent entity and portfolio compression exercises are not subject to part 43 because they fail to meet the definition of ''publicly reportable swap transaction.'' [519]

When the Data Is To Be Reported and Made Public

Section 43.5 provides the time delays for public dissemination of swap transactions and pricing data for (i) publicly reportable swap transactions that have notional or principal amounts that are equal to or greater than the appropriate minimum block sizes for such swaps; and (ii) publicly reportable swap transactions that do not have established appropriate minimum block sizes. The Commission anticipates there will be technology costs associated with ensuring that the correct time delay is applied to a swap that is publicly disseminated by the SDR, including the cost to an SDR in holding swap data until the appropriate time delay expires and costs associated with adjusting the time delay in accordance with § 43.5. In an effort to mitigate these costs, the Commission is phasing in the time delays for public dissemination. These time delays will reduce the potential for lost market liquidity by providing market participants adequate time to hedge prior to public dissemination. The Commission believes the phasing in of shorter time delays will support post-trade transparency in the swaps markets and will preserve market liquidity while enabling market participants to adjust trading strategies.

Commenters offered numerous suggestions with respect to time delays for particular asset classes.[520] However, the Commission does not believe that the direct costs associated with the various suggestions would be quantitatively significant (*i.e.,* all the suggested time delays would require technological systems and operating systems). The Commission chose the time delays and phase in schedule adopted herein because it finds the approach reasonable in ensuring that all relevant swap data is eventually publicly disseminated, while minimizing the burden on the industry at the outset.

How the Data Is To Be Reported (i.e., Coordinate Universal Time and Data Fields)

Commenters suggested that the value derived from moving the industry to Coordinate Universal Time (''UTC'') appears minimal when compared to the costs involved.[521] Notwithstanding the comments regarding costs of requiring UTC, the Commission anticipates that the move to UTC will better facilitate the efficient dissemination of pricing data by eliminating the need to conduct time conversions. The Commission notes that use of UTC in the part 43 rules refers only to the execution timestamp that is publicly disseminated.[522] Consistency across the global swaps market is an important goal, and the Commission believes that requiring UTC will allow market participants and reporting parties to recreate the order of trades, reduce fragmentation and reduce the need for market participants to convert different transaction times to understand the order of trades in a particular market.

Commenters requested that the data fields required to be reported for off-facility swaps pursuant to part 43 be the same data fields that end-users typically record in their spreadsheets or trade capture systems.[523] The Commission believes all the applicable data fields listed in Appendix A to part 43 are necessary to enhance price discovery by giving context and meaning to the price and volume information required to be publicly disseminated. The data recorded in end-user spreadsheets and trade capture systems typically are not sufficiently comprehensive for purposes of providing enhanced price discovery. However, the Commission has reduced the costs of reporting by coordinating the data fields in Appendix A to part 43 with those data fields that are expected to be required in part 45 for regulatory reporting. This coordination is expected to reduce costs by allowing reporting parties, SEFs and DCMs to send one set of data to an SDR for the purpose of satisfying the requirements of both rules.

Phasing of Compliance

In response to commenters' requests for a phased in implementation of the part 43 real-time reporting requirements,[524] the Commission is adopting a three-phase schedule for compliance with part 43, in addition to several other phase in procedures, including the phasing in of time delays for public dissemination. The compliance schedule and additional phase in procedures will ensure efficient compliance with part 43 while considering the costs of implementation to market participants, registered entities and the public. In developing the part 43 compliance schedule and time delays for public dissemination, the Commission considered the different market characteristics of swap products and asset classes, differences in market participants and available technology and infrastructure. Accordingly, the Commission provides less developed markets and less sophisticated market participants longer lead time for compliance and public dissemination.

C. Reporting and Public Dissemination in Light of CEA Section 15(a)

As noted above, CEA section 15(a) directs the Commission to consider particular criteria in evaluating the costs and benefits of a particular Commission action. These are considered below.

1. Protection of Market Participants and the Public

The reporting and public dissemination requirements described in part 43 will provide transparency and enhanced price discovery in the swaps market. The Commission anticipates that the increase in transparency will lead to greater competition for swap market participants' business and will increase liquidity in the swaps markets. Accordingly, the Commission anticipates that compliance by market participants and registered entities with part 43's reporting and public dissemination requirements will lower the cost of commodities, goods and services to American businesses. This, in turn, will support the overall economy and the general public.

In deciding the manner in which to facilitate real-time reporting, the Commission was cognizant of how the current swap market operates. Thus, for example, the reporting requirements remain flexible to account for differences among market participants, including differences based on asset class, sophistication of swap

ways. For example, an affiliate immediately may enter into a mirror swap transaction with its affiliate on the same terms as the marketing-facing swap transaction. By way of further example, a market-facing affiliate may enter into multiple transactions with affiliates that are not at arm's length in order to transfer the risks associated with an arm's length, market-facing transaction.

[519] *See* CL–TriOptima. The definition of ''publicly reportable swap transaction'' also states that portfolio compression exercises would be excluded from the definition. The Commission agrees with those commenters who asserted the reporting of portfolio compression exercises would be costly without the public dissemination of such swap transaction and pricing data enhancing price discovery.

[520] *See* section II.E. (''Section 43.5—Time Delays for Public Dissemination of Swap Transaction and Pricing Data'').

[521] *See* CL–ISDA/SIFMA.

[522] Reporting parties, SEFs and DCMs may agree to report different timestamps to the SDR or to record different timestamps pursuant to § 43.3(i).

[523] *See, e.g.,* CL–Coalition of Energy End-Users.

[524] *See supra* section III. (''Effectiveness/Implementation and Interim Period'').

counterparties and differences based on the methods of execution. Section 43.2 provides a flexible definition of ''as soon as technologically practicable'' that would enable certain market participants, such as non-financial end-users, longer time periods for the reporting of swap transaction and pricing data to an SDR as compared to reporting parties with greater technological reporting capabilities (*e.g.,* swap dealers). Further, the definition of ''as soon as technologically practicable'' aims to ensure that similarly situated market participants are subject to the same standards.

The Commission believes that certain swaps in the ''other commodity'' asset class require further analysis before requiring public dissemination of such swaps. Therefore, § 43.4(d) does not subject certain swaps in the ''other commodity'' asset class to part 43 requirements at this time.[525]

The Commission also believes that the rounding convention and notional caps that an SDR must apply on the publicly disseminated notional or principal amount will enable market participants to effectively hedge risk without disclosing the actual size of the trade to the market. Such provisions will further protect the identities of parties, business transactions and market positions of market participants. Additionally, the Commission is providing time delays in § 43.5 which will protect market participants by enabling them to enter into swaps with limited concern about other market participants trading ahead of such information.

The definition of ''publicly reportable swap transaction'' in § 43.2 does not require that certain swaps that are not executed at arm's length be reported to an SDR for public dissemination. The Commission believes that public dissemination of swaps between affiliates may reveal the identities of the parties or disclose information about the business transactions or market positions of market participants. By not requiring the reporting and public dissemination of such transactions, the Commission is further protecting market participants who may engage in swaps between affiliates.

The Commission also believes that the data fields in appendix A to part 43 will provide market participants and the public with the ability to analyze the data for similar swaps while adequately protecting the identities of market participants. The data fields do not require identifying information to be publicly disseminated and the Commission believes that the ''Additional Price Notation,'' ''Indication of Other Price Affecting Term'' and ''Indication of Collateralization'' data fields, among others, will enable market participants and the public to more easily compare bespoke transactions to standardized transactions thereby enhancing the usefulness of such data for market participants and the public.

2. Efficiency, Competitiveness and Financial Integrity of Markets [526]

The Commission believes that part 43 promotes market efficiency in a number of respects, including:

- *Reduced trading cost potential.* As discussed above, the Commission anticipates that, similar to the reduction in corporate bond market trading costs following the implementation of TRACE, the requirements of part 43 will likely result in reduced trading costs and the lowering of economic rents earned by dealers in swaps markets.
- *Straight-through processing.* Sections 43.3(a)(2) and 43.3(b)(1) establish a streamlined, straight-through process for SEFs and DCMs to utilize their technological expertise and ability to report swap transaction and pricing data ''as soon as technologically practicable'' to an SDR. The Commission believes this is the more efficient approach compared to alternatives that would interpose an intermediary in the data reporting chain.[527]
- *Assignment of off-facility swap reporting responsibilities to the presumptively more capable party.* Section 43.3(a)(3) establishes a protocol that assigns greater reporting responsibility to counterparty categories presumed to possess greater technological capabilities and resources as a result of their likely greater swap transaction volume. For example, unless otherwise agreed to by the swap counterparties, SDs (and MSPs) are required to serve as the reporting party for off-facility swaps. The Commission believes responsibility assignment on this basis increases the potential to realize reporting scale economies.
- *Choice of SDRs for real-time data dissemination.* The Commission believes that § 43.3(a)(1)'s designation of SDRs to receive real-time swap transaction and pricing data ''as soon as technologically practicable'' for public dissemination also promotes potential scale economy efficiencies. Under the proposed part 45 rules, reporting parties, SEFs and DCMs must transmit a separate set of data to SDRs for regulatory reporting purposes. Accordingly, § 43.3(a)(1) may accommodate SEFs' and DCMs' ability to utilize technology and connections with an SDR for both real-time and regulatory reporting purposes.
- *Reduction of data fragmentation.* The Commission believes that exercise of its authority under CEA section 2(a)(13)(D) to designate SDRs as the public disseminators of real-time reported swap transaction and pricing data will reduce fragmentation of swap data available to the public. Greater data consistency, in turn, will facilitate the ability of market participants, and the public generally, to efficiently access, interpret, and compile a complete data set.

The Commission believes that part 43 promotes market competitiveness in a number of respects:

- *Reduction of data fragmentation.* As noted above, the Commission believes that exercise of its CEA section 2(a)(13)(D) authority to designate SDRs as the public disseminators of real-time reported swap transaction and pricing data will reduce fragmentation of swap data available to the public. Greater data consistency, in turn, should guard against information asymmetries that market participants with superior knowledge of, or access to, might arbitrage for competitive advantage.
- *Front running prevention via SDR continuous receipt requirements.* Sections 43.3(f) and (g) require that SDRs be able to accept real-time swap transaction and pricing data for public dissemination at all times, including during closing hours. Specifically, § 43.3(g) provides that during closing hours real-time swap transaction and pricing data that is accepted by an SDR be held in queue. As a result, these provisions enable continuous reporting of real-time swap transaction and pricing data by reporting parties, SEFs and DCMs, notwithstanding reporting party or registered entity location and time zone. In so doing, the Commission believes the rules promote swaps market competitiveness by foreclosing avenues for market participants to arbitrage reporting by execution location for competitive advantage.

[525] The Commission has indicated that it will address the public dissemination of such ''other commodity'' swaps in a forthcoming Commission release.

[526] The Commission has identified no impact to the financial integrity of futures markets from part 43 in its consideration of CEA section 15(a)(2)(B). Although by its terms CEA section 15(a)(2)(B).applies to futures, not swaps, the Commission finds this factor useful in analyzing the costs and benefits of swaps regulations as well.

[527] However, as the Commission has noted previously, nothing would prevent a SEF or DCM from contracting with a third party to assist with reporting the real-time swap transaction and pricing data to an SDR.

• *Time delay regime that protects market liquidity and prevents front-running.* The Commission believes that the time delay regime established in § 43.5 will enhance the competitiveness of swap markets by protecting market liquidity until appropriate minimum block sizes are adopted. Such time delays, which initially apply until a swap or group of swaps has an appropriate minimum block size, reduce the risk of large notional trade data being exposed to the market before the trade can be adequately hedged (*e.g.,* front-running or trading ahead).[528]

The Commission believes that part 43 promotes market integrity in a number of respects:

• *Error correction.* Section 43.3(e) provides reporting parties and SDRs with a clear process for addressing errors in real-time swap transaction and pricing data. These provisions will foster financial market integrity by ensuring that incorrectly disseminated swap transaction and pricing data is canceled and/or corrected. Further, this section gives the Commission enforcement powers, enhancing the Commission's ability to police market integrity.

• *Time delay phase in to prevent front-running.* The Commission believes that the phase in regime for time delays prescribed in § 43.5, discussed above, will counter the possibility for front-running large block trades before they can be adequately hedged.

• *SDR tools to ensure data accuracy.* Section 43.4(c) enables SDRs to ensure that they receive the data necessary to process and publicly disseminate the data fields described in appendix A to part 43. Section 43.4(c) provides that SDRs can ask reporting parties for additional data to ensure the accuracy of the real-time data (compared to regulatory data) as well as to ensure that the data is being reported in a timely manner. Such provisions will improve the integrity of the real-time reporting process by allowing SDRs an additional opportunity to ensure the accuracy of the data they received for public dissemination purposes.

3. Price Discovery

The Commission believes generally that swaps market price discovery will be enhanced by making useful, accurate swaps transaction price and volume data available to market participants and the public within the shortest time frame possible. The Commission further believes that the reporting and public dissemination requirements of part 43, working in concert, promote the goal of swaps market price discovery enhancement. The components that contribute to the attainment of this goal are described below.

• The provisions in part 43, reflecting the mandate of CEA section 2(a)(13)(A),[529] generally require that reporting of real-time data by reporting parties—SEFs and DCMs and public dissemination by SDRs—occur ''as soon as technologically practicable.'' The Commission believes that this approach means that swap transaction and pricing data is to be publicly disseminated at the fastest rate allowable given a market participant's technological capability.

• The error correction provisions of § 43.3(e) assign swap counterparties and registered entities responsibility to correct erroneous or omitted swap data and require the public dissemination of cancellations and corrections to errors and omissions. These provisions will help ensure the accuracy of swap transaction and pricing data, thereby increasing the data's price discovery value to market participants and the public. Absent this provision, uncorrected erroneous data could distort price discovery.

• Appendix A to part 43 specifies the data fields an SDR must use in public dissemination, and what each data field represents. The Commission believes that the values assigned to the data fields are appropriately tailored to facilitate price transparency and inform price discovery. Moreover, data field consistency will enhance price discovery by ensuring the integrity of the price and volume reflected in a particular reported asset class.

• The definition of ''publicly reportable swap transaction'' in § 43.2 does not, at this time, require the public dissemination of swaps that are not executed at arm's length. Accordingly, certain swaps between affiliates of a corporate group and portfolio compression exercises are not subject to part 43. The Commission believes that not requiring such transactions to be publicly disseminated precludes the public dissemination of transaction and pricing data that could misinform the market and create an inaccurate appearance of market depth.

• Swap transaction and pricing data is to be publicly disseminated in a consistent, usable and machine-readable electronic format that allows the data to be downloaded, saved and analyzed, as described in § 43.3(d)(1).

• SDRs are required pursuant to § 43.3(f) to continuously accept and publicly disseminate swap transaction and pricing data (with the exception of certain closing hours). The Commission believes this requirement enhances the breadth of the swap data available and the speed at which such data is available to market participants and the public.

• The requirements of §§ 43.4(d)(3) and (4), require the public dissemination of data that identifies the underlying asset for the transaction, except with respect to certain swaps in the ''other commodity'' asset class where dissemination could compromise anonymity.

• The rounding convention and the caps on the publicly disseminated notional or principal amounts provided for in §§ 43.4(g) and (h) allow for price discovery for market participants and the public while protecting swap counterparty anonymity.

4. Sound Risk Management Practices

The Commission believes that the enhanced price discovery afforded by reporting and public dissemination of swap transaction and pricing data will better enable market participants to measure risk. Accordingly, because market participants will be better able to manage their risk at an entity level, risk will be better managed. Allowing market participants and the public to measure risk will reduce the risk of another financial crisis.

Additionally, the Commission is not requiring that portfolio compression exercises, which market participants use for risk management purposes, be subject to part 43 at this time. In so doing, the Commission is attempting to tailor real-time public dissemination requirements to accommodate, rather than chill, prudent risk management by market participants.

Finally, commenters asserted that the costs of risk management to end-users may increase if data relating to large sized trades is publicly disseminated to the market before swap counterparties have an opportunity to hedge a publicly reportable swap transaction.[530] The Commission believes that the provisions in § 43.5 provide for adequate time delays for public dissemination of swap transaction and pricing data, providing end-users and other market participants the latitude necessary to manage their risks.

[528] See supra, section II.E (''Time Delays for Public Dissemination of Swap Transaction and Pricing Data'').

[529] That is: ''real-time public reporting means to report data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.''

[530] *See, e.g.,* CL–Chesapeake; CL–ATA.

5. Other Public Interest Considerations

The Commission does not believe that the public dissemination requirements of part 43 discussed above will have a material effect on public interest considerations other than those previously identified.

D. Recordkeeping and Timestamping Requirements of Part 43

Proposed § 43.3(i) provided recordkeeping requirements for data related to part 43, including a general provision that all data relating to a ''reportable swap transaction'' shall be maintained for a period of not less than five years after public dissemination of such swap. The provision also provided specific provision for the retention of data by a SEF or DCM and a provision for the retention of data by an SD or MSP. Further, proposed § 43.5(f) provided timestamp requirements for block trades and large notional swaps, which included a requirement to maintain records of all timestamps. Upon consideration of the comments received and as discussed elsewhere in this rulemaking, the utility of the Commission's existing regulations in achieving the regulatory objective proposed, and the recordkeeping requirements proposed elsewhere, including part 45, the Commission significantly limited the recordkeeping requirements of proposed Part 43. The only recordkeeping requirements imposed will be the timestamping requirements as described in § 43.3(h).

Section 43.3(h) timestamps are required for all publicly reportable swap transactions and must be applied by SEFs and DCMs, SDRs, and registrants (SDs and MSPs). In consideration of a commenter's concerns regarding the costs to end-users to comply with any recordkeeping requirements, § 43.3(h) is not applicable to non-SDs/MSPs.[531]

The Commission received multiple comments addressing the timestamping requirements of proposed § 43.5(f). As proposed, the timestamping requirements would have applied only to swaps considered ''block trades.'' However, the Commission believes that there is a need for SEFs, DCMs, SDRs SDs and MSPs to record and maintain certain timestamps regarding the transmission and dissemination of all real-time swap transaction and pricing data,[532] notwithstanding that proposed § 43.5(f)'s timestamping requirement is inconsistent with current industry practice.

1. Benefits of the Recordkeeping and Timestamping Requirements

The Commission believes a timestamp remains necessary for two reasons: (1) It establishes an audit trail that serves enforcement purposes; and (2) it allows market participants and the public to re-create the trading day, thereby enhancing price discovery. Accordingly, the Commission is adopting in § 43.3(h) timestamp requirements for all reportable swap transactions. However, in response to commenters' concerns about the costs of timestamping and retaining records for non-SDs/MSPs, the Commission is not requiring non-SDs/non-MSPs who engage in an off-facility swap to retain similar timestamp.[533] The Commission believes that requiring non-SDs/MSPs to retain any timestamp other than the execution timestamp would be unduly burdensome to those parties.

2. Costs of the Recordkeeping and Timestamping Requirements

The Commission has not identified quantifiable costs of timestamping that are not associated with an information collection subject to the PRA. These costs therefore have been accounted for in the PRA section of this rulemaking and the information collection requests filed with OMB, as required by the PRA.

E. Recordkeeping and Timestamping Requirements in Light of CEA Section 15(a)

1. Protection of Market Participants and the Public

The Commission believes that the timestamp requirement of § 43.3(h) will enable the Commission to ensure that reporting parties, SEFs and DCMs are reporting and that SDRs are publicly disseminating swap transaction and pricing data ''as soon as technologically practicable.'' Absent a timestamp requirement, the Commission would be unable to create an audit trail to identify potential inadequacies in reporting and public dissemination. The Commission's oversight to ensure that similarly situated SD, MSPs, SEFs and DCMs are reporting in the same timeframes, and that SDRs are publicly disseminating in the same manner, is essential to protecting market participants and the public.

2. Efficiency, Competitiveness and Financial Integrity of Markets[534]

The Commission believes that the requirement to maintain timestamps will enable it to ensure the integrity of the data being disseminated. This in turn promotes the operational efficiency, competitiveness, and integrity of the swaps market to which the data pertains. Further, it provides a basis for the Commission to perform audit trail and compliance reviews with respect to SDs, MSPs, SEFs, DCMs and SDRs, thus bolstering the positive market benefits.

3. Price Discovery

The Commission believes that the requirement to maintain timestamps will promote price discovery in an important way. By providing a means for the Commission to ensure that SDs, MSPs, SEFs, DCMs and SDRs are reporting and publicly disseminating swap transaction and pricing data ''as soon as technologically practicable,'' timestamp information will promote price discovery because non-compliance will be readily detectable through timestamps and may be an effective enforcement tool in an enforcement action.

4. Sound Risk Management Practices

The Commission believes that the requirement for SDs, MSPs, SEFs, DCMs and SDRs to maintain the timestamps described in § 43.3(h) will become part of these entities' risk management policies and procedures in an effort to ensure compliance with the part 43 rules.

5. Other Public Interest Considerations

The Commission does not believe that the timestamp recordkeeping requirements of part 43 discussed above will have a material effect on public interest considerations other than those identified above.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider the impact of its rules on ''small entities.''[535] A regulatory flexibility analysis or certification typically is required for ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to'' the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).[536]

[531] In other words, when an end-user has a reporting obligation because it engaged in an off-facility swap, the end-user is not required to timestamp the data pursuant to § 43.3(h). However, the execution timestamps in appendix A to part 43 must be performed.

[532] This is swap transaction and pricing data associated with ''publicly reportable swap transactions.''

[533] However, end-users must still submit a timestamp of the execution time if they are the reporting party to a swap.

[534] *See supra,* note 526.

[535] 5 U.S.C. 601 *et seq.*

[536] 5 U.S.C. 601(2), 603, 604 and 605.

With respect to the proposed real-time public reporting rule, the Commission provided in its RFA statement that the proposed rule would have a direct effect on numerous entities, specifically DCMs, SDRs, SEFs, SDs, MSPs, and certain single end-users.[537] In the proposal, the Chairman, on behalf of the Commission, certified that the rulemaking would not have a significant economic effect on a substantial number of small entities. Comments on that certification were sought.

In the Proposing Release, the Commission then provided that it previously had established that certain entities subject to its jurisdiction are not small entities for purposes of the RFA. Because of the central role they play in the regulatory scheme concerning futures trading, the importance of futures trading in the national economy, and the financial requirements needed to comply with the regulatory requirements imposed on them under the CEA, DCMs have long been determined not to be not small entities.[538]

The Commission also provided that certain entities that would be subject to the proposed rule—namely SDRs, SEFs, SDs, and MSPs—are entities for which the Commission had not previously made a size determination for RFA purposes. It proposed that these entities should not be considered to be small entities based upon their size and other characteristics.[539]

Finally, the Commission recognized that the proposed rule could have an economic effect on certain single end users, in particular those end users that enter into swap transactions with another end-user. Unlike the other parties to which the proposed rulemaking would apply, these end users are not subject to designation or registration with or to comprehensive regulation by the Commission. The Commission recognized that some of these end users may be small entities.

Notwithstanding that some small entities may be subject to the real-time reporting rules, the determination to certify pursuant to section 605(b) of the RFA that the proposed rule would not have a significant economic effect on a substantial number of small entities was based upon the nature of the reporting hierarchy that was set forth in the proposal. The proposed rule was structured so that most swaps that are expected to be executed by an end user would not be required to be reported by the end user, but rather by a party that is subject to Commission registration and regulation.

The reporting obligations primarily would fall on the trading facility on which an end-user executes a swap or, in the case of a swap executed ''off-facility'' with an SD or MSP, on the SD or MSP. Under the proposed rules, end users would only be required to report swaps that are executed ''off-facility'' with another end user, and in such circumstances, only one of the end users subject to the transaction would be required to report.

The Commission received one comment respecting its RFA certification. An association of not-for-profit electric end users provided that its membership includes small entities as that term is defined in the RFA.[540] The association commented that the Commission should conduct a regulatory flexibility analysis for each of its rulemakings individually, as well as a regulatory flexibility analysis for all of its rulemakings on a cumulative basis. The association supported its comment by providing that ''[e]ach of the complex and interrelated regulations currently being proposed by the Commission has both an individual, and a cumulative, effect on such small entities.''

Though the association asserted that some of its members are small, it did not provide any factual support to indicate that the proposed real-time reporting rule would have a significant economic effect on a substantial number of small entities, contrary to the Commission's certification. Nonetheless, in light of the association's comments, the Commission has given further consideration to the reporting hierarchy that was proposed.

Critically, as noted above, the reporting hierarchy was established in order to ensure that any end users that may be required to comply with these real-time reporting rules would only have to do so with respect to transactions that are not conducted on or pursuant to the rules of a DCM or SEF or with a counterparty that is registered with and regulated by the Commission. Moreover, as the CEA as amended by the Dodd-Frank Act provides, most of the end users who will transact with each other ''off-facility'', are not expected to be small entities.

Section 2(e) of the CEA was amended to provide that ''it shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of [a regulated trading venue].'' [541] Eligible Contract Participants (''ECPs'') were first defined in section 1a(12) of the CEA in the Commodity Futures Modernization Act (''CFMA'') in 2000, creating a category of individuals and entities that Congress determined to be sufficiently sophisticated in financial matters that they should be permitted to trade over-the-counter swaps without the protection of federal regulation.[542] In the Dodd-Frank Act, Congress made two changes to the statutory ECP definition, both of which increased the thresholds to qualify as an ECP, making it harder for some entities and individuals to qualify.[543] Thus, only entities that reach a significant level of financial resources or sophistication are eligible to transact in swaps ''off-facility.''

We understand from the association's comments that some of their members who qualify as ECPs under the CEA have been determined to be ''small entities'' by the SBA. A member will be an SBA small entity if its total electric output for the preceding fiscal year did not exceed four million megawatt hours. Notwithstanding that some members that are ECPs may fall within the SBA small entity determination, the Commission understands this to be an anomaly. As a general rule, there are few small entities that will be eligible to transact in swaps ''off-facility'' under the CEA in light of the financial resource and sophistication thresholds established in the ECP definition.

Accordingly, for the reasons stated in the proposal and foregoing discussion in response to the comments received from the association, the Commission continues to believe that the rulemaking will not have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the

[537] *See* 75 FR at 76170.

[538] *Id.*

[539] *Id.*

[540] *See* CL–NFPEUU.

[541] 7 U.S.C. 2(e).

[542] *See* ''Report of the President's Working Group on Financial Markets'' (Nov. 1999) at 16 (recommending that ''sophisticated counterparties that use OTC derivatives simply do not require the same protections under the CEA as those required by retail investors''); H.R. Rep. No. 106–711 pt. 1, at 28 (2000) (Committee on Agriculture reporting that the CFMA ''implements the PWG recommendations,'' including the exclusion for ''bilateral swap agreements entered into by eligible parties (large and/or sophisticated) and done on a principal-to-principal basis)); and H.R. Rep. No. 106–711 pt. 2, at 212 (2000) (statement of Representative John J. LaFalce, providing that the ''rationale * * * is that swaps can be complex instruments requiring a variety of protections for financially unsophisticated consumers [and] come in a great variety of tailored obligations, some of which might, indeed, be so complex as to be inappropriate for all but the most seasoned of investors'').

[543] *Compare* section 1a(12) of the CEA, 7 U.S.C. 1a(12) (2009), with sections 721(a)(1) and (9) of the Dodd-Frank Act, respectively redesignating section 1a(12) as section 1a(18) and increasing thresholds for certain categories of ECP.

real-time reporting requirements being adopted herein will not have a significant economic impact on a substantial number of small entities.

VII. List of Commenters

1. Markit
2. Asset Management Group of the Securities Industry and Financial Markets Association (''SIFMA AMG'')
3. Managed Funds Association (''MFA'')
4. Lawrence Schultz
5. The Energy Authority
6. Argus Media, Inc. (''Argus'')
7. Professor Darrell Duffie, Stanford University (''Darrell Duffie'')
8. Chesapeake Energy Corporation (''Chesapeake'')
9. Members of Congress of the United States (House Committee on Financial Services—Congressman Spencer Bachus and Congressman Frank Lucas) (''Members of Congress'')
10. Barclays Bank PLC, BNP Paribas S.A., Deutsche Bank AG, Royal Bank of Canada, The Royal Bank of Scotland Group PLC, Société Générale, UBS AG ('' Seven Foreign Headquartered Banks'')
11. J.P. Morgan (''JPM'')
12. Gibson Dunn on behalf of the Coalition for Derivatives End-Users (''Coalition for Derivatives End-Users'')
13. Committee on Capital Markets Regulation
14. Goldman Sachs & Co. (''GS'')
15. Not-For-Profit Energy End-User Coalition (''NFPEEU'')
16. Barclays Capital, Inc. (''Barclays'')
17. Air Transport Association (''ATA'')
18. Pacific Investment Management Company, LLC (''PIMCO'')
19. Committee on the Investment of Employee Benefit Assets & American Benefits Council (''ABC/CIEBA'')
20. Commodity Markets Council (''CMC'')
21. Better Markets, Inc. (''Better Markets'')
22. Investment Company Institute (''ICI'')
23. Intercontinental Exchange, Inc. (''ICE'')
24. MarkitSERV
25. Coalition of Physical Energy Companies (''COPE'')
26. International Options Markets Association/World Federation of Exchanges (''WFE/IOMA'')
27. UBS Securities LLC (''UBS'')
28. Global Foreign Exchange Division of Association for Financial Markets in Europe (''AFME''), the Securities Industry and Financial Markets Association (''SIFMA'') and the Asia Securities Industry and Financial Markets Association (''ASIFMA'') (collectively, ''GFXD'')
29. Edison Electrical Institute (''EEI'')
30. Encana Marketing (USA) Inc. (''Encana'')
31. LCH.Clearnet Group Limited (''LCH.Clearnet'')
32. CME Group, Inc. (''CME'')
33. Tradeweb Markets LLC (''Tradeweb'')
34. Coalition of Energy End-Users
35. Federal National Mortgage Association (''FNMA'')
36. Reval.com, Inc. (''Reval'')
37. Independent Petroleum Association of America (''IPAA'')
38. PCS Nitrogen Fertilizer, L.P. (''PCS Nitrogen'')
39. International Swaps and Derivatives Association & Securities Industry and Financial Markets Association (''ISDA/SIFMA'')
40. International Energy Credit Association (''IE Credit Association'')
41. Morgan Stanley (''MS'')
42. Hunton & Williams LLP on behalf of the Working Group of Commercial Energy Firms (''Working Group of Commercial Energy Firms'')
43. Freddie Mac
44. Financial Services Roundtable (''FSR'')
45. Vanguard
46. TriOptima
47. BlackRock, Inc. (''BlackRock'')
48. Dominion Resources, Inc. (''Dominion'')
49. Sadis & Goldberg LLP (''Sadis & Goldberg'')
50. Metlife, Inc. (''Metlife'')
51. Federal Home Loan Banks (''FHLBanks'')
52. Wholesale Markets Brokers' Association, Americas (''WMBAA'')
53. Depository Trust & Clearing Corporation (''DTCC'')
54. Cleary Gottlieb on behalf of Bank of America Merrill Lynch, BNP Paribas, Citi; Credit Agricole Corporate and Investment Bank; Credit Suisse Securities (USA), Deutsche Bank AG, Morgan Stanley, Nomura Securities International, In., PNC Bank, National Association, Société Générale, UBS Securities LLC, Wells Fargo & Company (''Cleary'')
55. Barclays Bank PLC; BNP Paribas S.A.; Credit Suisse AG; Deutsche Bank AG; HSBC; Nomura Securities International, Inc.; Rabobank Nederland; Royal Bank of Canada; The Royal Bank of Scotland Group PLC; Société Générale; The Toronto-Dominion Bank; UBS AG (''12 Foreign Headquartered Financial Institutions'')
56. Financial Industry Regulatory Authority (''FINRA'')
57. Société Générale (''Soc Gen'')
58. European Parliament Rapporteur for the Regulation on OTC Derivatives, Central Counterparties and Trade Repositories
59. European Industry Representatives (Credit Suisse, Deutsche Bank, Citi, JP Morgan, Barclays, Goldman Sachs, UBS)
60. Rabobank Nederland
61. Insurance Groups (American Council of Life Insurers, Genworth, Manulife, John Hancock Life, New York Life, Northwestern Mutual, Prudential, MetLife, Allstate Life) (''Insurance Groups'')
62. Fidelity Investments & Vanguard
63. Credit Suisse
64. ISDA & Kalorama Partners
65. ISDA
66. National Rural Electric Cooperative Association, American Public Power Association, Large Public Power Council, Edison Electric Institute, Electric Power Supply Association
67. Futures Industry Association, Financial Services Forum, International Swaps and Derivatives Association, Securities Industry and Financial Markets Association (''FIA/FSF/ISDA/SIFMA'')
68. The Bank of Tokyo-Mitsubishi UFJ, Ltd.; Mizuho Corporate Bank, Ltd.; Sumitomo Mitsui Banking Corporation (''Japanese Banks'')
69. NextEra Energy, Inc. (''NextEra'')
70. Chris Barnard
71. Citi, Morgan Stanley, JP Morgan
72. BP
73. Industrial Energy Consumers of America (''IE Consumers of America'')
74. Alice Corporation (''Alice'')
75. Futures Industry Association, The Financial Services Roundtable, Institute of International Bankers, Insured Retirement Institute, International Swaps and Derivatives Association, Securities Industry and Financial Markets Association, U.S. Chamber of Commerce (''FIA/FSR/IIB/IRI/ISDA/SIFMA/Chamber'')
76. Association of Institutional Investors (''AII'')
77. American Gas Association (''AGA'')
78. Natural Gas Exchange, Inc. (''NGX'')
79. Shell Trading (US) Company & Shell Energy North America (''Shell'')
80. American Petroleum Institute (''API'')
81. Swaps & Derivatives Market Association (''SDMA'')
82. Jackson National Life Insurance (''Jackson'')
83. Eris Exchange, LLC (''Eris'')
84. Citadel LLC (''Citadel'')

85. American Bankers Association & ABA Securities Association (''ABA/ABASA'')
86. DC Energy, LLC (''DC Energy'')
87. The Alternative Investment Management Association Ltd (''AIMA'')
88. FXall

List of Subjects in 17 CFR Part 43

Real-time public reporting; Block trades; Large notional off-facility swaps; Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, as amended, and in particular Section 2(a)(13) of the Act, the Commission hereby adopts an amendment to Chapter I of Title 17 of the Code of Federal Regulations by adding part 43 to read as follows:

PART 43—REAL-TIME PUBLIC REPORTING

Sec.
43.1 Purpose, scope, and rules of construction.
43.2 Definitions.
43.3 Method and timing for real-time public reporting.
43.4 Swap transaction and pricing data to be publicly disseminated in real-time.
43.5 Time delays for public dissemination of swap transaction and pricing data.
43.6 [Reserved]
Appendix A to Part 43—Data Fields for Public Dissemination
Appendix B to Part 43—Enumerated Physical Commodity Contracts and Other Contracts
Appendix C to Part 43—Time Delays for Public Dissemination

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 43.1 Purpose, scope, and rules of construction.

(a) *Purpose.* This part implements rules relating to the reporting and public dissemination of certain swap transaction and pricing data to enhance transparency and price discovery pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203, 124 Stat. 1376 (2010).

(b)(1) *Scope.* The provisions of this part shall apply to all swaps as defined in Section 1a(47) of the Act and any implementing regulations thereunder, including:

(i) Swaps subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act, including those swaps that are excepted from the requirement pursuant to Section 2(h)(7) of the Act;

(ii) Swaps that are not subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act, but are cleared at a registered derivatives clearing organization;

(iii) Swaps that are not cleared at a registered derivatives clearing organization and are reported to a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time; and

(iv) Swaps that are required to be cleared under Section 2(h)(2) of the Act, but are not cleared.

(2) This part also shall apply to registered entities as defined in the Act, as well as to parties to a swap including swap dealers, major swap participants and U.S.-based market participants in a manner as the Commission may determine.

(c) *Rules of construction.* The examples in this part and in appendix A to this part are not exclusive. Compliance with a particular example or application of a sample clause, to the extent applicable, shall constitute compliance with the particular portion of the rule to which the example relates.

(d) *Severability.* If any provision of this part, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

§ 43.2 Definitions.

As used in this part:

Act means the Commodity Exchange Act, as amended, 7 U.S.C. 1 *et seq.*

Affirmation means the process by which parties to a swap verify (orally, in writing, electronically or otherwise) that they agree on the primary economic terms of a swap (but not necessarily all terms of the swap). Affirmation may constitute ''execution'' of the swap or may provide evidence of execution of the swap, but does not constitute confirmation (or confirmation by affirmation) of the swap.

Appropriate minimum block size means the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade or large notional off-facility swap.

As soon as technologically practicable means as soon as possible, taking into consideration the prevalence, implementation and use of technology by comparable market participants.

Asset class means a broad category of commodities including, without limitation, any ''excluded commodity'' as defined in Section 1a(19) of the Act, with common characteristics underlying a swap. The asset classes include interest rate, foreign exchange, credit, equity, other commodity and such other asset classes as may be determined by the Commission.

Block trade means a publicly reportable swap transaction that:

(1) Involves a swap that is listed on a registered swap execution facility or designated contract market;

(2) Occurs away from the registered swap execution facility's or designated contract market's trading system or platform and is executed pursuant to the registered swap execution facility's or designated contract market's rules and procedures;

(3) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and

(4) Is reported subject to the rules and procedures of the registered swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5 of this part.

Business day means the twenty-four hour day, on all days except Saturdays, Sundays and legal holidays, in the location of the reporting party or registered entity reporting data for the swap.

Business hours means the consecutive hours of one or more consecutive business days.

Confirmation means the consummation (electronic or otherwise) of legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap. A confirmation shall be in writing (electronic or otherwise) and shall legally supersede any previous agreement (electronic or otherwise) relating to the swap.

Confirmation by affirmation means the process by which one party to a swap acknowledges its assent to the complete swap terms submitted by the other party to the swap. If the parties to a swap are using a confirmation service vendor, complete swap terms may be submitted electronically by a party to such vendor's platform and the other party may affirm such terms on such platform.

Embedded option means any right, but not an obligation, provided to one party of a swap by the other party to the swap that provides the party holding the option with the ability to change any one or more of the economic terms of the swap as those terms previously were established at confirmation (or were in effect on the start date).

Executed means the completion of the execution process.

Execution means an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. Execution occurs simultaneous with or immediately following the affirmation of the swap.

Large notional off-facility swap means an off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission's regulations.

Novation means the process by which a party to a swap transfers all of its rights, liabilities, duties and obligations under the swap to a new legal party other than the counterparty to the swap. The transferee accepts all of the transferor's rights, liabilities, duties and obligations under the swap. A novation is valid as long as the transferor and the remaining party to the swap are given notice, and the transferor, transferee and remaining party to the swap consent to the transfer.

Off-facility swap means any publicly reportable swap transaction that is not executed on or pursuant to the rules of a registered swap execution facility or designated contract market.

Other commodity means any commodity that is not categorized in the other asset classes as may be determined by the Commission.

Public dissemination and publicly disseminate means to publish and make available swap transaction and pricing data in a non-discriminatory manner, through the Internet or other electronic data feed that is widely published and in machine-readable electronic format.

Publicly reportable swap transaction means:

(1) Unless otherwise provided in this part—

(i) Any executed swap that is an arm's-length transaction between two parties that results in a corresponding change in the market risk position between the two parties; or

(ii) Any termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a swap that changes the pricing of the swap.

(2) Examples of executed swaps that do not fall within the definition of publicly reportable swap may include:

(i) Internal swaps between one-hundred percent owned subsidiaries of the same parent entity; and

(ii) Portfolio compression exercises.

(3) These examples represent swaps that are not at arm's length and thus are not publicly reportable swap transactions, notwithstanding that they do result in a corresponding change in the market risk position between two parties.

Real-time public reporting means the reporting of data relating to a swap transaction, including price and volume, as soon as technologically practicable after the time at which the swap transaction has been executed.

Remaining party means a party to a swap that consents to a transferor's transfer by novation of all of the transferor's rights, liabilities, duties and obligations under such swap to a transferee.

Reporting party means the party to a swap with the duty to report a publicly reportable swap transaction in accordance with this part and section 2(a)(13)(F) of the Act.

Transferee means a party to a swap that accepts, by way of novation, all of a transferor's rights, liabilities, duties and obligations under such swap with respect to a remaining party.

Transferor means a party to a swap that transfers, by way of novation, all of its rights, liabilities, duties and obligations under such swap, with respect to a remaining party, to a transferee.

Unique product identifier means a unique identification of a particular level of the taxonomy of the product in an asset class or sub-asset class in question, as further described in § 43.4(f) and appendix A to this part. Such unique product identifier may combine the information from one or more of the data fields described in appendix A.

Widely published means to publish and make available through electronic means in a manner that is freely available and readily accessible to the public.

§ 43.3 Method and timing for real-time public reporting.

(a) *Responsibilities of parties to a swap to report swap transaction and pricing data in real-time*—(1) *In general.* A reporting party shall report any publicly reportable swap transaction to a registered swap data repository as soon as technologically practicable after such publicly reportable swap transaction is executed. For purposes of this part, a registered swap data repository includes any swap data repository provisionally registered with the Commission pursuant to part 49 of this chapter.

(2) *Swaps executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* A party to a publicly reportable swap transaction shall satisfy its reporting requirement under this section by executing a publicly reportable swap transaction on or pursuant to the rules of a registered swap execution facility or designated contract market.

(3) *Off-facility swaps.* All off-facility swaps shall be reported by the reporting party as soon as technologically practicable following execution, to a registered swap data repository for the appropriate asset class in accordance with the rules set forth in this part. Unless otherwise agreed to by the parties prior to the execution of the publicly reportable swap transaction, the following persons shall be reporting parties for off-facility swaps:

(i) If only one party is a swap dealer or major swap participant, then the swap dealer or major swap participant shall be the reporting party;

(ii) If one party is a swap dealer and the other party is a major swap participant, then the swap dealer shall be the reporting party;

(iii) If both parties are swap dealers, then the swap dealers shall designate which party shall be the reporting party;

(iv) If both parties are major swap participants, then the major swap participants shall designate which party shall be the reporting party;

(v) If neither party is a swap dealer or a major swap participant, then the parties shall designate which party (or its agent) shall be the reporting party.

(b) *Public dissemination of swap transaction and pricing data*—(1) *Publicly reportable swap transactions executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* A registered swap execution facility or designated contract market shall satisfy the requirements of this subparagraph by transmitting swap transaction and pricing data to a registered swap data repository, as soon as technologically practicable after the publicly reportable swap transaction has been executed on or pursuant to the rules of such trading platform or facility.

(2) *Public dissemination of swap transaction and pricing data by registered swap data repositories.* A registered swap data repository shall ensure that swap transaction and pricing data is publicly disseminated, as soon as technologically practicable after such data is received from a registered swap execution facility, designated contract market or reporting party, unless such publicly reportable swap transaction is subject to a time delay described in § 43.5 of this part, in which case the publicly reportable swap

transaction shall be publicly disseminated in the manner described in § 43.5.

(3) Prohibitions on disclosure of data. (i) If there is a registered swap data repository for an asset class, a registered swap execution facility or designated contract market shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a registered swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a registered swap data repository for public dissemination;

(B) Such disclosure is only made to market participants on such registered swap execution facility or designated contract market;

(C) Market participants are provided advance notice of such disclosure; and

(D) Any such disclosure by the registered swap execution facility or designated contract market is non-discriminatory.

(ii) If there is a registered swap data repository for an asset class, a swap dealer or major swap participant shall not disclose swap transaction and pricing data relating to publicly reportable swap transactions in such asset class, prior to the public dissemination of such data by a registered swap data repository unless:

(A) Such disclosure is made no earlier than the transmittal of such data to a registered swap data repository for public dissemination;

(B) Such disclosure is only made to the customer base of such swap dealer or major swap participant, including parties who maintain accounts with or have been swap counterparties with such swap dealer or major swap participant;

(C) Swap counterparties are provided advance notice of such disclosure; and

(D) Any such disclosure by the swap dealer or major swap participant is non-discriminatory.

(c) *Requirements for registered swap data repositories in providing the public dissemination of swap transaction and pricing data in real-time*—(1) *Compliance with 17 CFR part 49.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall comply with part 49 of this chapter and shall publicly disseminate swap transaction and pricing data in accordance with this part as soon as technologically practicable upon receipt of such data, except as otherwise provided in this part.

(2) *Acceptance and public dissemination of all swaps in an asset class.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for swaps in its selected asset class shall accept and publicly disseminate swap transaction and pricing data in real-time for all publicly reportable swap transactions within such asset class, unless otherwise prescribed by the Commission.

(3) *Annual independent review.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall perform, on an annual basis, an independent review in accordance with established audit procedures and standards of the registered swap data repository's security and other system controls for the purposes of ensuring compliance with the requirements in this part.

(d) *Availability of swap transaction and pricing data to the public.* (1) Registered swap data repositories shall publicly disseminate swap transaction and pricing data in a consistent, usable and machine-readable electronic format that allows the data to be downloaded, saved and analyzed.

(2) Data that is publicly disseminated pursuant to this part shall be available from an Internet Web site in a format that is freely available and readily accessible to the public.

(3) Registered swap data repositories shall provide to the Commission a hyperlink to the Internet Web site where publicly disseminated swap transaction and pricing data can be accessed by the public.

(e) *Errors or omissions*—(1) *In general.* Any errors or omissions in swap transaction and pricing data that were publicly disseminated in real-time shall be corrected or cancelled in the following manner:

(i) If a party to the swap becomes aware of an error or omission in the swap transaction and pricing data reported with respect to such swap, such party shall promptly notify the other party of the error and/or correction.

(ii) If a reporting party to a swap becomes aware of an error or omission in the swap transaction or pricing data which it reported to a registered swap data repository or which was reported by a registered swap execution facility or designated contract market with respect to such swap, either through its own initiative or through notice by the other party to the swap, the reporting party shall promptly submit corrected data to the same registered swap execution facility, designated contract market or registered swap data repository.

(iii) If the registered swap execution facility or designated contract market becomes aware of an error or omission in the swap transaction or pricing data reported with respect to such swap, or receives notification from the reporting party, the registered swap execution facility or designated contract market shall promptly submit corrected data to the same registered swap data repository.

(iv) Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate any cancellations or corrections to such data, as soon as technologically practicable after receipt or discovery of any such cancellation or correction.

(2) *Improper cancellation or correction.* Reporting parties, registered swap execution facilities, designated contract markets and registered swap data repositories shall not submit or agree to submit a cancellation or correction for the purpose of re-reporting swap transaction and pricing data in order to gain or extend a delay in public dissemination of accurate swap transaction or pricing data or to otherwise evade the reporting requirements in this part.

(3) *Cancellation.* A registered swap data repository shall cancel any incorrect data that had been publicly disseminated by publicly disseminating a cancellation of such data, as soon as technologically practicable, in the manner described in appendix A to this part.

(4) *Correction.* A registered swap data repository shall correct any incorrect data that had been publicly disseminated by publicly disseminating a cancellation of the incorrect swap transaction and pricing data and then publicly disseminating the correct data, as soon as technologically practicable, in the manner described in appendix A to this part.

(f) *Hours of operation of registered swap data repositories.* Unless otherwise provided in this subsection, a registered swap data repository shall have systems in place to continuously receive and publicly disseminate swap transaction and pricing data in real-time pursuant to this part.

(1) A registered swap data repository may declare closing hours to perform system maintenance.

(2) A registered swap data repository shall, to the extent reasonably possible, avoid scheduling closing hours when, in its estimation, the U.S. market and major foreign markets are most active.

(3) A registered swap data repository shall comply with the requirements under part 40 of this chapter in setting closing hours and shall provide advance notice of its closing hours to market participants and the public.

(g) *Acceptance of data during closing hours.* During closing hours, a registered swap data repository shall have the capability to receive and hold in queue any data regarding publicly reportable swap transactions pursuant to this part.

(1) Upon any reopening after closing hours, a registered swap data repository shall promptly and publicly disseminate the swap transaction and pricing data of swaps held in queue, in accordance with the requirements of this part.

(2) If at any time during closing hours a registered swap data repository is unable to receive and hold in queue swap transaction and pricing data pursuant to this part, then the registered swap data repository shall immediately upon reopening issue notice that it has resumed normal operations. Any registered swap execution facility, designated contract market or reporting party that is obligated under this section to report data to the registered swap data repository shall report the data to the registered swap data repository immediately after receiving such notice.

(h) *Timestamp requirements.* In addition to the execution timestamp described in appendix A to this part, registered entities, swap dealers and major swap participants shall have the following timestamp requirements with respect to real-time public reporting of swap transaction and pricing data for all publicly reportable swap transactions:

(1) A registered swap execution facility or designated contract market shall timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second of when such registered swap execution facility or designated contract market:

(i) Receives data from a swap counterparty (if applicable); and

(ii) Transmits such data to a registered swap data repository for public dissemination.

(2) A registered swap data repository shall timestamp swap transaction and pricing data relating to a publicly reportable swap transaction with the date and time, to the nearest second when such registered swap data repository:

(i) Receives data from a registered swap execution facility, designated contract market or reporting party; and

(ii) Publicly disseminates such data.

(3) A swap dealer or major swap participant shall timestamp swap transaction and pricing data relating to an off-facility swap with the date and time, to the nearest second when such swap dealer or major swap participant transmits such data to a registered swap data repository for public dissemination.

(4) Records of all timestamps required by this subsection shall be maintained for a period of at least five years from the execution of the publicly reportable swap transaction.

(i) *Fees.* Any fees or charges assessed on a reporting party, registered swap execution facility or designated contract market by a registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time for the collection of such data shall be equitable and non-discriminatory. If such registered swap data repository allows a fee discount based on the volume of data reported to it for public dissemination, then such discount shall be made available to all reporting parties, registered swap execution facilities and designated contract markets in an equitable and non-discriminatory manner.

§ 43.4 Swap transaction and pricing data to be publicly disseminated in real-time.

(a) *In general.* Swap transaction and pricing information shall be reported to a registered swap data repository so that the registered swap data repository can publicly disseminate swap transaction and pricing data in real-time in accordance with this part, including the manner described in this section and appendix A to this part.

(b) *Public dissemination of data fields.* Any registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall publicly disseminate the information described in appendix A to this part, as applicable, for any publicly reportable swap transaction.

(c) *Additional swap information.* A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time may require reporting parties, registered swap execution facilities and designated contract markets to report to such registered swap data repository, such information that is necessary to compare the swap transaction and pricing data that was publicly disseminated in real-time to the data reported to a registered swap data repository pursuant to Section 2(a)(13)(G) of the Act or to confirm that parties to a swap have reported in a timely manner pursuant to § 43.3 of this part. Such additional information shall not be publicly disseminated by the registered swap data repository.

(d) *Anonymity of the parties to a publicly reportable swap transaction*—(1) *In general.* Swap transaction and pricing data that is publicly disseminated in real-time shall not disclose the identities of the parties to the swap or otherwise facilitate the identification of a party to a swap. A registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time shall not publicly disseminate such data in a manner that discloses or otherwise facilitates the identification of a party to a swap.

(2) *Actual product description reported to registered swap data repository.* Reporting parties, registered swap execution facilities and designated contract markets shall provide a registered swap data repository with swap transaction and pricing data that includes an actual description of the underlying asset(s). This requirement is separate from the requirement that a reporting party, registered swap execution facility or designated contract market shall report swap data to a registered swap data repository pursuant to Section 2(a)(13)(G) of the Act and the Commission's regulations.

(3) *Public dissemination of the actual description of underlying asset(s).* Notwithstanding the anonymity protection for certain swaps in the other commodity asset class in § 43.4(d)(4)(ii), a registered swap data repository shall publicly disseminate the actual underlying asset(s) of all publicly reportable swap transactions in the interest rate, credit, equity and foreign exchange asset classes.

(4) *Public dissemination of the underlying asset(s) for certain swaps in the other commodity asset class.* A registered swap data repository shall publicly disseminate swap transaction and pricing data in the other commodity asset class as described in this subsection.

(i) A registered swap data repository shall publicly disseminate swap transaction and pricing data for publicly reportable swap transactions in the other commodity asset class in the manner described in § 43.4(d)(4)(ii).

(ii) The actual underlying asset(s) shall be publicly disseminated for the following publicly reportable swap transactions in the other commodity asset class:

(A) Any publicly reportable swap transaction that references one of the contracts described in appendix B to this part;

(B) Any publicly reportable swap transaction that is economically related

to one of the contracts described in appendix B to this part; and

(C) Any publicly reportable swap transaction executed on or pursuant to the rules of a registered swap execution facility or designated contract market.

(e) *Unique product identifier.* If a unique product identifier is developed that sufficiently describes one or more of the swap transaction and pricing data fields for real-time reporting described in appendix A to this part, then such unique product identifier may be publicly disseminated in lieu of the data fields that it describes.

(f) *Reporting of notional or principal amounts to a registered swap data repository*—(1) *Off-facility swaps.* The reporting party shall report the actual notional or principal amount of any off-facility swap to a registered swap data repository that accepts and publicly disseminates such data pursuant to part 43.

(2) *Swaps executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* (i) A registered swap execution facility or designated contract market shall transmit the actual notional or principal amount for all swaps executed on or pursuant to the rules of such registered swap execution facility or designated contract market, to a registered swap data repository that accepts swaps in the asset class.

(ii) The actual notional or principal amount for any block trade executed pursuant to the rules of a registered swap execution facility or designated contract market shall be reported to the registered swap execution facility or designated contract market pursuant to the rules of the registered swap execution facility or designated contract market.

(g) *Public dissemination of rounded notional or principal amounts.* The notional or principal amount of a publicly reportable swap transaction, as described in appendix A to this part, shall be rounded and publicly disseminated by a registered swap data repository as follows:

(1) If the notional or principal amount is less than one thousand, round to nearest five, but in no case shall a publicly disseminated notional or principal amount be less than five;

(2) If the notional or principal amount is less than ten thousand but equal to or greater than one thousand, round to nearest one hundred;

(3) If the notional or principal amount is less than 100 thousand but equal to or greater than ten thousand, round to nearest one thousand;

(4) If the notional or principal amount is less than one million but equal to or greater than 100 thousand, round to nearest ten thousand;

(5) If the notional or principal amount is less than 100 million but equal to or greater than one million, round to the nearest one million;

(6) If the notional or principal amount is less than 500 million but equal to or greater than 100 million, round to the nearest ten million;

(7) If the notional or principal amount is less than one billion but equal to or greater than 500 million, round to the nearest 50 million;

(8) If the notional or principal amount is less than 100 billion but equal to or greater than one billion, round to the nearest one billion;

(9) If the notional or principal amount is greater than 100 billion, round to the nearest 50 billion.

(h) *Public dissemination caps on notional or principal amounts.* The rounded notional or principal amount that is publicly disseminated for a publicly reportable swap transaction shall be capped in a manner that adjusts in accordance with the appropriate minimum block size that corresponds to such publicly reportable swap transaction. If there is no appropriate minimum block size applicable to a publicly reportable swap transaction, then the cap on the notional or principal amount that is publicly disseminated shall be applied in the following manner:

(1) *Interest rate swaps.* (i) The publicly disseminated notional or principal amount for an interest rate swap subject to the rules in this part with a tenor greater than zero up to and including two years shall be capped at USD 250 million.

(ii) The publicly disseminated notional or principal amount for an interest rate swap subject to the rules in this part with a tenor greater than two years up to and including ten years shall be capped at USD 100 million.

(iii) The publicly disseminated notional or principal amount for an interest rate swap subject to the rules in this part with a tenor greater than ten years shall be capped at USD 75 million.

(2) *Credit swaps.* The publicly disseminated notional or principal amount for a credit swap subject to the rules in this part shall be capped at USD 100 million.

(3) *Equity swaps.* The publicly disseminated notional or principal amount for an equity swap subject to the rules in this part shall be capped at USD 250 million.

(4) *Foreign exchange swaps.* The publicly disseminated notional or principal amount for a foreign exchange swap subject to the rules in this part shall be capped at USD 250 million.

(5) *Other commodity swaps.* The publicly disseminated notional or principal amount for any other commodity swap subject to the rules in this part shall be capped at USD 25 million.

§ 43.5 Time delays for public dissemination of swap transaction and pricing data.

(a) *In general.* The time delay for the real-time public reporting of a block trade or large notional off-facility swap begins upon execution, as defined in § 43.2 of this part. It is the responsibility of the registered swap data repository that accepts and publicly disseminates swap transaction and pricing data in real-time to ensure that the block trade or large notional off-facility swap transaction and pricing data is publicly disseminated pursuant to this part upon the expiration of the appropriate time delay described in § 43.5(d) through (h).

(b) *Public dissemination of publicly reportable swap transactions subject to a time delay.* A registered swap data repository shall publicly disseminate swap transaction and pricing data that is subject to a time delay pursuant to this paragraph, as follows:

(1) No later than the prescribed time delay period described in this paragraph;

(2) No sooner than the prescribed time delay period described in this paragraph; and

(3) Precisely upon the expiration of the time delay period described in this paragraph.

(c) *Interim time delay*—(1) *In general.* The public dissemination of swap transaction and pricing data relating to any publicly reportable swap transaction shall receive the same time delays for block trades and large notional off-facility swaps, as described in this subsection, until such time as an appropriate minimum block size is established with respect to such publicly reportable swap transaction.

(2) *Swaps executed on or pursuant to the rules of a registered swap execution facility or designated contract market.* Any publicly reportable swap transaction that does not have an appropriate minimum block size and that is executed on or pursuant to the rules of a registered swap execution facility or designated contract market shall follow the time delays set forth in § 43.5(d) until such time that an appropriate minimum block size is established for such publicly reportable swap transaction.

(3) *Off-facility swaps subject to the mandatory clearing requirement.* Any

off-facility swap that does not have an appropriate minimum block size and that is subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act and Commission regulations, with the exception of those off-facility swaps that are either excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations or that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared, shall follow the time delays set forth in § 43.5(e) until such time that an appropriate minimum block size is established for such off-facility swap.

(4) *Off-facility swaps in the interest rate, credit, foreign exchange and equity asset classes not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any off-facility swap in the interest rate, credit, foreign exchange or equity asset classes, where at least one party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is excepted from such mandatory clearing requirement and that does not have an appropriate minimum block size shall follow the time delays set forth in § 43.5(f) until such time that an appropriate minimum block size is established for such off-facility swap.

(5) *Off-facility swaps in the other commodity asset class not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any off-facility swap in the other commodity asset class, where at least one party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is excepted from such mandatory clearing requirement and that does not have an appropriate minimum block size shall follow the time delays set forth in § 43.5(g) until such time that an appropriate minimum block size is established for such off-facility swap.

(6) *Off-facility swaps in all asset classes not subject to the mandatory clearing requirement in which neither counterparty is a swap dealer or major swap participant.* Any off-facility swap, in all asset classes, where neither party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is excepted from such mandatory clearing requirement and that does not have an appropriate minimum block size shall follow the time delays set forth in § 43.5(h) until such time that an appropriate minimum block size is established for such off-facility swap.

(7) *Time delays for public dissemination upon establishment of an appropriate minimum block size.* After an appropriate minimum block size is established for a particular swap or category of swaps, all publicly reportable swap transactions that are below the appropriate minimum block size shall be publicly disseminated as soon as technologically practicable after execution pursuant to § 43.3 of this part.

(d) *Time delay for block trades executed pursuant to the rules of a registered swap execution facility or designated contract market.* Any block trade that is executed pursuant to the rules of a registered swap execution facility or designated contract market shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1) *Time delay during Year 1.* For one year beginning on the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all publicly reportable swap transactions described in § 43.5(d) shall be 30 minutes immediately after execution of such publicly reportable swap transaction.

(2) *Time delay after Year 1.* Beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all publicly reportable swap transactions described in § 43.5(d) shall be 15 minutes immediately after execution of such publicly reportable swap transaction.

(e) *Time delay for large notional off-facility swaps subject to the mandatory clearing requirement*—(1) *In general.* This subsection shall not apply to off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations, and this subsection shall not apply to those swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

(2) *Swaps subject to the mandatory clearing requirement where at least one party is a swap dealer or major swap participant.* Any large notional off-facility swap that is subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act and Commission regulations, in which at least one party is a swap dealer or major swap participant, shall receive a time delay as follows:

(i) *Time delay during Year 1.* For one year beginning on the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(e)(2) shall be 30 minutes immediately after execution of such swap.

(ii) *Time delay after Year 1.* Beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(e)(2) shall be 15 minutes immediately after execution of such swap.

(3) *Swaps subject to the mandatory clearing requirement where neither party is a swap dealer or major swap participant.* Any large notional off-facility swap that is subject to the mandatory clearing requirement described in Section 2(h)(1) of the Act and Commission regulations, in which neither party is a swap dealer or major swap participant, shall receive a time delay as follows:

(i) *Time delay during Year 1.* For one year beginning on the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(e)(3) shall be four hours immediately after execution of such swap.

(ii) *Time delay during Year 2.* For one year beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(e)(3) shall be two hours immediately after execution of such swap.

(iii) *Time delay after Year 2.* Beginning on the second anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(e)(3) shall be one hour immediately after execution of such swap.

(f) *Time delay for large notional off-facility swaps in the interest rate, credit, foreign exchange or equity asset classes not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any large notional off-facility swap in the interest rate, credit, foreign exchange or equity asset classes where at least one party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is excepted from such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1) *Time delay during Year 1.* For one year beginning on the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(f) shall be one hour immediately

after execution of such swap; however, any large notional off-facility swap in the interest rate, credit, foreign exchange or equity asset classes in which one party is not a swap dealer or major swap participant and such party is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, shall receive a time delay of one hour immediately after execution of such swap; or if such swap transaction or pricing data is received by the registered swap data repository later than one hour immediately after execution, the registered swap data repository shall publicly disseminate such data as soon as technologically practicable after the data is received.

(2) *Time delay during Year 2.* For one year beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(f) shall be 30 minutes immediately after execution of such swap; however, any large notional off-facility swap in the interest rate, credit, foreign exchange or equity asset classes in which one party is not a swap dealer or major swap participant and such party is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, shall receive a time delay of 30 minutes immediately after execution of such swap; or if such swap transaction or pricing data is received by the registered swap data repository later than 30 minutes immediately after execution, the registered swap data repository shall publicly disseminate such data as soon as technologically practicable after the data is received.

(3) *Time delay after Year 2.* Beginning on the second anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(f) shall be 30 minutes immediately after execution of such swap.

(g) *Time delay for large notional off-facility swaps in the other commodity asset class not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty.* Any large notional off-facility swap in the other commodity asset class where at least one party is a swap dealer or major swap participant, that is not subject to the mandatory clearing requirement or is exempt from such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1) *Time delay during Year 1.* For one year beginning on the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(g) shall be four hours immediately after execution of such swap; however, any large notional off-facility swap in the other commodity asset class in which only one party is not a swap dealer or major swap participant and such party is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, shall receive a time delay of four hours immediately after execution of such swap, or if such swap transaction or pricing data is received by the registered swap data repository later than four hours immediately after execution of such swap, the registered swap data repository shall publicly disseminate such data as soon as technologically practicable after the data is received.

(2) *Time delay during Year 2.* For one year beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(g) shall be two hours immediately after execution of such swap; however, any large notional off-facility swap in the other commodity asset class in which only one party is not a swap dealer or major swap participant and such party is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, shall receive a time delay of two hours immediately after execution of such swap, or if such swap transaction or pricing data is received by the registered swap data repository later than two hours immediately after execution, the registered swap data repository shall publicly disseminate such data as soon as technologically practicable after the data is received.

(3) *Time delay after Year 2.* Beginning on the second anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(g) shall be two hours after the execution of such swap.

(h) *Time delay for large notional off-facility swaps in all asset classes not subject to the mandatory clearing requirement in which neither counterparty is a swap dealer or a major swap participant.* Any large notional off-facility swap in which neither party is a swap dealer or a major swap participant, which is not subject to the mandatory clearing requirement or is exempt from such mandatory clearing requirement, shall receive a time delay in the public dissemination of swap transaction and pricing data as follows:

(1) *Time delay during Year 1.* For one year beginning on the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(h) shall be 48 business hours immediately after execution of such swap.

(2) *Time delay during Year 2.* For one year beginning on the first anniversary of the compliance date of this part, the time delay for public dissemination of swap transaction and pricing data for all swaps described in § 43.5(h) shall be 36 business hours immediately after the execution of such swap.

(3) *Time delay after Year 2.* Beginning on the second anniversary of the compliance date of this part, the time delay for public dissemination transaction and pricing data for all swaps described in § 43.5(h) shall be 24 business hours immediately after the execution of such swap.

§ 43.6 [Reserved]

Appendix A to Part 43—Data Fields for Public Dissemination

The data fields described in Table A1 and Table A2, to the extent applicable for a particular publicly reportable swap transaction, shall be publicly disseminated pursuant to part 43. Table A1 and Table A2 provide guidance for compliance with the reporting and public dissemination of each data field. Reporting parties, registered swap execution facilities and designated contract markets shall report swap transaction and pricing data necessary to publicly disseminate such data, pursuant to part 43 and this appendix A to part 43, to a registered swap data repository as soon as technologically practicable after execution of the publicly reportable swap transaction. A registered swap data repository shall publicly disseminate the information in Table A1 and A2 in a consistent form and manner for swaps within the same asset class.

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TABLE A1.—Data Fields and Suggested Form and Order for Real-time Public Reporting of Swap Transaction and Pricing Data.

Field	Description	Example	Data application
Cancellation	An indication that a publicly reportable swap transaction has been incorrectly or erroneously publicly disseminated and is canceled. There shall be a clear indication to the public that the publicly reportable swap transaction is being canceled (e.g., "CANCEL") followed by the swap transaction and pricing data that is being canceled in the same form and manner that it was erroneously reported. Any cancellations should be made in accordance with § 43.3(e). If a publicly reportable swap transaction is canceled, it may be corrected by reporting the "Correction" data field and the correct information.	CANCEL…… (e.g., the information is being cancelled in accordance with § 43.3(e))	Information is needed to inform market participants and the public that swap transaction and pricing data was erroneously disseminated to the public.
Correction	An indication that the swap transaction and pricing data that is being publicly disseminated is a correction to previously publicly disseminated swap transaction and pricing data that contained an error or omission. In order for a correction to occur, the registered swap data repository that accepts and publicly	CORRECT …… (e.g., the information is a correction to a previously reported swap)	Information needed to inform market participants and the public that a particular publicly reportable swap transaction that is being reported is a correction to swap transaction and pricing data that has previously been publicly disseminated by a registered swap data

	disseminates swap transaction and pricing data shall first cancel the incorrectly reported swap transaction and pricing data and the follow such cancellation with the correction. There shall be a clear indication to the public that the swap transaction and pricing data that is being reported is a correction (e.g., "CORRECT"). Any corrections should be made in accordance with § 43.3(e).		repository.
Execution timestamp	The time and date of execution of the publicly reportable swap transaction in Coordinated Universal Time (UTC). The timestamp shall be displayed with two digits for each of the hour, minute and second, or in such other manner that clearly publicly disseminates the information.	13-10-2007; 15:25:47 (e.g., the date (October 13, 2007) and time in UTC (15:25:47))	Information needed to indicate the time and date of execution of the publicly reportable swap transaction.
Cleared or uncleared	An indication of whether or not a publicly reportable swap transaction is going to be cleared by a derivatives clearing organization. If the publicly reportable swap transaction is cleared by a derivatives clearing organization, a "C" may be used and if uncleared a "U" may be used.	C……. (e.g., cleared)	Information needed to indicate whether or not a publicly reportable swap transaction is cleared through a derivatives clearing organization.
Indication of Collateralization	If a swap is not cleared, an indication of whether a swap is (A) Uncollateralized –	PC …… (e.g., partially collateralized)	Information needed to provide information regarding differences

	there is no credit arrangement between the parties or the agreement between the parties of an uncleared swap states that no collateral (neither initial margin nor variation margin) has to be posted at any time; (B) Partially Collateralized – the agreement between the parties states that both parties will regularly post variation margin; (C) One-Way Collateralized – the agreement between the parties of an uncleared swap states that only one party to such swap agrees to post initial margin, regularly post variation margin or both; or (D) Fully Collateralized – the agreement between the parties of an uncleared swap states that initial margin must be posted and variation margin must be regularly posted by both parties.		in prices in uncleared swaps.
Indication of end-user exception	An indication of whether a party to a swap is using the end-user exception pursuant to CEA Section 2(h)(7) and Commission regulations.	EU …… (e.g., swap is not required to be cleared under CEA Section 2(h)(7) and Commission regulations)	Information needed to indicate the reason why a swap that would otherwise be subject to mandatory clearing is not being cleared and to help market participants and the public evaluate the price of the publicly reportable swap transaction.
Indication of other price affecting term (indication for	An indication that the publicly reportable swap transaction has	B*……..... (e.g., bespoke swap that has a material	Information needed to indicate whether a publicly reportable

non-standardized (bespoke) swaps)	one or more additional term(s) or provision(s), other than those listed in the required real-time data fields, that materially affect(s) the price of the publicly reportable swap transaction. Publicly reportable swap transactions that are reported with this designation would be non-standardized (bespoke) swaps.	price affecting term that is not otherwise publicly disseminated)	swap transaction is non-standardized (bespoke) and to inform the public that there are one or more additional term(s) or provision(s) that materially affect the price of the publicly reportable swap transaction.
Block trades and large notional off-facility swaps	An indication of whether a publicly reportable swap transaction is a block trade or large notional off-facility swap. If a publicly reportable swap transaction is a block trade or a large notional off-facility swap and subject to a time delay in real-time public reporting pursuant to § 43.5, such block trade or large notional off-facility swap may be indicated as follows: Block trade or large notional off-facility swap ("BLK"). If a trade is not a block trade or large notional off-facility swap, then no indication would be publicly disseminated.	BLK…… (e.g., swap is block trade or large notional off-facility swap)	Information needed to indicate whether a publicly reportable swap transaction is a block trade or a large notional off-facility swap. This information is important since it will alert market participants and the public to the differences in notional or principal amount and the time delay in the public dissemination of the swap transaction and pricing data.
Execution venue	An indication of the venue of execution of a publicly reportable swap transaction. The specific name of a registered swap execution facility or designated contract market need not be reported; however, an	OFF…… (e.g., off-facility swap)	Information needed to indicate whether a publicly reportable swap transaction is executed on a swap market, as an off-facility swap, or as a block trade or large notional off-facility swap.

	indication of whether the publicly reportable swap transaction is executed on or pursuant to the rules of a registered swap execution facility or designated contract market or is executed as an off-facility swap.		
Effective or Start date	The date that the publicly reportable swap transaction becomes effective or starts.	20-02-2009…… (e.g., February 20, 2009)	Information needed to indicate when the terms of the publicly reportable swap transaction become effective or start.
End Date	The maturity, termination, or end date of the publicly reportable swap transaction. The time between the Effective or Start Date and End Date field will indicate the tenor of the swap.	04-02-2014 …… (e.g., February 4, 2014)	Information needed to determine the end month and year of the publicly reportable swap transaction and to help market participants and the public evaluate the price of the reportable swap transaction.
Day count convention	The determination of how interest accrues over time for the swap.	Actual/360 …..…… (e.g., day count convention uses Actual/360 day count fraction)	Information needed to better inform market participants and the public about the price of the swap.
Settlement currency (i.e., value date)	The settlement currency type for publicly reportable swap transactions in the foreign exchange asset class.	Settle JPY …… (e.g., the foreign exchange swap is settled in Japanese Yen)	Information needed to inform market participants and the public about how to price the publicly reportable swap transaction.
Asset class	An indication of one of the broad categories as described in § 43.2(e).	IR……... (e.g., interest rate asset class)	Information needed to broadly describe the underlying asset to facilitate comparison with other similar publicly reportable swap transactions.
Sub-asset class for other commodity	An indication of a more specific description of	AG……. (e.g., agriculture)	Information needed to define with greater

	the asset class for other commodity. Such sub-asset classes for other commodity publicly reportable swap transactions may include, but are not limited to, energy, precious metals, metals-other, agriculture, weather, emissions and volatility.		specificity, the type of other commodity that is being publicly disseminated and to facilitate comparison with other similar publicly reportable swap transactions.
Contract type	An indication of one of four specific contract types of publicly reportable swap transactions. Such contract types may include but are not limited to: Swap, swaption and stand-alone options.	S-…… (e.g., swap)	Information needed to describe the publicly reportable swap transaction and to be able to compare such publicly reportable swap transaction to other similar publicly reportable swap transactions.
Contract sub-type	An indication of more specificity into the type of contract described in the contract type field. Such contract sub-types may include, but are not limited to, basis swaps, index swaps, broad-based security swaps, and basket swaps.	SS…….. (e.g., basis swap)	Information needed to define with greater specificity, the type of contract that is being publicly disseminated and to facilitate comparison with other similar publicly reportable swap transactions.
Price-forming continuation data	An indication of whether such publicly reportable swap transaction is a post-execution event that affects the price of the publicly reportable swap transaction. Such price-forming continuation data may include: Terminations, assignments, novations, exchanges, transfers, amendments, conveyances or	NOV……... (e.g., novation)	Information needed to describe whether the reportable swap transaction is a post-execution event for a pre-existing swap (i.e., not a newly executed swap) that materially affects the price of the publicly reportable swap transaction.

	extinguishing of rights that change the price of the swap.		
Underlying asset 1	The asset, reference asset or reference obligation for payments of a party's obligations under the publicly reportable swap transaction reference. The underlying asset may be a reference price, index, obligation, physical commodity with delivery point, futures contract or any other rate or instrument agreed to by the parties to a publicly reportable swap transaction.	TX……. (e.g., TX may represent "Treasury 10 year")	Information needed to describe the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction.
Underlying asset 2	The asset, reference asset or reference obligation for payments of a party's obligations under the publicly reportable swap transaction reference. The underlying asset may be a reference price, index, obligation, physical commodity with delivery point, futures contract or any other rate or instrument agreed to by the parties to a publicly reportable swap transaction. If there are more than two underlying assets, such underlying assets shall be reported in the same manner as above.	IIIL……. (e.g., IIIL may represent 3-month LIBOR)	Information needed to describe the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction.
Price notation	The price, yield, spread, coupon, etc., depending on the type of swap, which is calculated at affirmation. The pricing characteristic shall not include any	162……. (e.g., 162 may indicate the spread for a credit default swap index)	Information needed to describe the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly

	premiums associated with margin, collateral, independent amounts, reconcilable post-execution events, options on a swap, or other non-economic characteristics. The format in which the pricing characteristic is real-time reported to the public shall be the format commonly sought by market participants for each particular market or contract.		reportable swap transaction.
Additional price notation	The additional price notation shall include any premiums associated with reconcilable post-execution events, the presence of collateral, front-end payments, back-end payments, or other non-economic characteristics (e.g., counterparty credit risk) not illustrated in the reporting field for pricing characteristic. The additional price notation shall not include options as they are reported elsewhere. The additional price notation shall be publicly disseminated as an addition or subtraction of the pricing characteristic and in a way commonly sought by market participants for each particular market or contract.	+0.25…….. (e.g., +0.25 would indicate the net present value of the premiums separated from the price notation)	Additional information needed to describe the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction.
Unique product identifier	Certain fields may be replaced with a unique	12345 ……. (e.g., 12345 may	Information needed to describe the

	product identifier, if such unique identifier exists, to the extent that such unique product identifier adequately describes such fields.	represent a 10 year interest rate swap based on 3 month LIBOR)	publicly reportable swap transaction and enable market participants and the public to compare such publicly reportable swap transaction to other similar publicly reportable swap transactions. Such information would substitute the information described in one or more reportable fields in accordance with §43.4(e).
Notional currency 1 (i.e., base currency)	An indication of the type of currency of the notional or principal amount. The notional currency may be reported in a commonly accepted code (e.g., the three character alphabetic ISO 4217 currency code).	EUR…… (e.g., Euro)	Information needed to describe the type of currency of the notional or principal amount.
Rounded notional or principal amount 1	The total rounded currency amount or quantity of units of the underlying asset. The notional or principal amounts for publicly reportable swap transactions, including block trades and large notional off-facility swaps, shall be reported and rounded amounts shall be publicly disseminated pursuant § 43.4.	200……. (e.g., 200 may represent 200 million of the notional currency 1)	Information needed to identify the size of the publicly reportable swap transaction and to help evaluate the price of the publicly reportable swap transaction.
Notional currency 2 (i.e., counter currency)	An indication of the type of currency of the notional or principal amount. The notional currency may be reported in a commonly accepted code (e.g., the	USD……... (e.g., U.S. Dollar)	Information needed to describe the type of currency of the notional or principal amount.

	three character alphabetic ISO 4217 currency code).		
Rounded notional or principal amount 2	The total rounded currency amount or quantity of units of the underlying asset. The notional or principal amounts for the publicly reportable swap transactions, including block trades and large notional off-facility swaps, shall be reported and rounded amounts shall be publicly disseminated pursuant to § 43.4. Each notional or principal amount (if there is more than one) should be labeled (e.g., 1, 2, 3, etc.) such that the number corresponds to the underlying asset for which the notional or principal amount is applicable. If there are more than two notional or principal amounts, then each additional notional or principal amount shall be reported in the same manner.	45…… (e.g., 45 may represent 45 million of the notional currency 2)	Information needed to identify the size of the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction.
Payment frequency 1	An integer multiplier of a time period describing how often the parties to the publicly reportable swap transaction exchange payments associated with each party's obligation under the publicly reportable swap	2M…….. (e.g., payment would occur every two months)	Information needed to identify the pricing characteristic of the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap

	transaction. Such payment frequency may be described as one letter preceded by an integer.		transaction.
Payment frequency 2	An integer multiplier of a time period describing how often the parties to the publicly reportable swap transaction exchange payments associated with each party's obligation under the publicly reportable swap transaction. Such payment frequency may be described as one letter preceded by an integer. Each payment frequency (if there is more than one) should be labeled (e.g., 1, 2, 3, etc.) such that the number corresponds to the underlying asset for which the payment frequency is applicable. If there are more than two payment frequencies, then each additional payment frequency shall be reported in the same manner.	6W……. (e.g., payment would occur every six weeks)	Information needed to identify the pricing characteristic of the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction.
Reset frequency 1	An integer multiplier of a period describing how often the parties to the publicly reportable swap transaction shall evaluate and, when applicable, change the price used for the underlying assets of the publicly reportable swap transaction. Such reset frequency may be	1Y…… (e.g., reset occurs every year)	Information needed to identify the pricing characteristic of the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction.

	described as one letter preceded by an integer.		
Reset frequency 2	An integer multiplier of a period describing how often the parties to the publicly reportable swap transaction shall evaluate and, when applicable, change the price used for the underlying assets of the publicly reportable swap transaction. Such reset frequency may be described as one letter preceded by an integer. Each reset frequency (if there is more than one) should be labeled with a number (e.g., 1, 2, 3, etc.) such that the number corresponds to the underlying asset for which the reset frequency is applicable. If there are more than two reset frequencies, then each additional reset frequency shall be reported in the same manner.	6M…….. (e.g., reset occurs every six months)	Information needed to identify the pricing characteristic of the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction.

TABLE A2.—Additional real-time public reporting data fields for options, swaptions and swaps with embedded options.

The data fields described in Table A2 of appendix A to this part apply to all options, swaptions and embedded options. If a swap has more than one embedded option, or multiple swaptions provisions, all such option provisions shall be reported in the same manner pursuant to the fields in Table A2 of appendix A to this part. When publicly disseminated, multiple embedded options associated with the same swap shall be clearly described and clearly linked to the swap with which the embedded option is associated.

Field	Description	Example	Data application
Embedded Option on Swap	An indication of whether or not the option fields are for an embedded option. This indication may be displayed as "EMBED1," "EMBED2," etc.	EMBED1…….. (e.g., the option is embedded in the terms of the swap)	Information needed to describe whether an option is embedded in a swap to prevent confusion and allow the market participants and the public to understand the information that is being reported.
Option Strike Price	The level or price at which an option may be exercised.	O25…… (e.g., the option strike price may be displayed with an "O" followed by the level or price, in this case 25 of the given underlying)	Information needed to indicate the level or price at which the option may be exercised to market participants and the public.
Option Type	An indication of the type of option. The option types may include, but are not limited to: Puts, calls, caps, floors, collars, straddles, strangles, amortizing, cancelable and other exotic option types.	P-…… (e.g., put)	Information needed to adequately describe the option to market participants and the public.
Option Family	An indication of the style of the option transaction. The option style/family may include, but are not limited to: European, American, Bermudan and Asian.	EU……..... (e.g., European option)	Information needed to adequately describe the option to market participants and the public.

Option currency	An indication of the type of currency of the option premium. The option currency may be reported in a commonly accepted code (e.g., the three character alphabetic ISO 4217 currency code).	USD……. (e.g., U.S. Dollar)	Information needed to identify the type of currency of the option premium to market participants and the public.
Option premium	An indication of the additional cost of the option to the publicly reportable swap transaction as a numerical value, not as the difference of the premiums of the parties' obligations to the reportable swap transaction. This field is associated with the option currency field.	50000…… (e.g., the cost would be 50,000 to purchase the option)	Information needed to explain the market value of the option to market participants and the public at the time of execution. This field will allow the public to understand the price of the publicly reportable swap transaction.
Option lockout period	An indication of the first allowable exercise date of the option.	20-08-2010…… (e.g., August 20, 2010)	Information is needed to identify when the option can first be exercised and to help market participants and the public evaluate the price of the option.
Option expiration date	An indication of the date that the option is no longer available for exercise.	20-08-2012……... (e.g., August 20, 2012)	Information is needed to identify when the option can no longer be exercised and to help market participants and the public evaluate the price of the option.

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Appendix B to Part 43—Enumerated Physical Commodity Contracts and Other Contracts

Enumerated Physical Commodity Contracts

Agriculture

ICE Futures U.S. Cocoa
ICE Futures U.S. Coffee C
Chicago Board of Trade Corn
ICE Futures U.S. Cotton No. 2
ICE Futures U.S. FCOJ–A
Chicago Mercantile Exchange Live Cattle
Chicago Board of Trade Oats
Chicago Board of Trade Rough Rice
Chicago Board of Trade Soybeans
Chicago Board of Trade Soybean Meal
Chicago Board of Trade Soybean Oil
ICE Futures U.S. Sugar No. 11
ICE Futures U.S. Sugar No. 16
Chicago Board of Trade Wheat
Minneapolis Grain Exchange Hard Red Spring Wheat
Kansas City Board of Trade Hard Winter Wheat
Chicago Mercantile Exchange Class III Milk
Chicago Mercantile Exchange Feeder Cattle
Chicago Mercantile Exchange Lean Hogs

Metals

Commodity Exchange, Inc. Copper
New York Mercantile Exchange Palladium
New York Mercantile Exchange Platinum
Commodity Exchange, Inc. Gold
Commodity Exchange, Inc. Silver

Energy

New York Mercantile Exchange Light Sweet Crude Oil
New York Mercantile Exchange New York Harbor Gasoline Blendstock
New York Mercantile Exchange Henry Hub Natural Gas

New York Mercantile Exchange New York Harbor Heating Oil

Other Contracts

Brent Crude Oil (ICE)

Appendix C to Part 43—Time Delays for Public Dissemination

The tables below provide clarification of the time delays for public dissemination set forth in § 43.5. The first row of each table describes the asset classes to which each chart applies. The column entitled ''Yearly Phase-In'' indicates the periods beginning on the compliance date of this part and beginning on the anniversary of the compliance date thereafter. The column entitled ''Time Delay for Public Dissemination'' indicates the precise length of time delay, starting upon execution, for the public dissemination of such swap transaction and pricing data by a registered swap data repository.

Table C1. Block Trades Executed on or Pursuant to the Rules of a Registered Swap Execution Facility or Designated Contract Market (Illustrating §§ 43.5(d)(1) and (d)(2))

Table C1 also designates the interim time delays for swaps described in § 43.5(c)(2).

ALL ASSET CLASSES

Yearly phase-in	Time delay for public dissemination
Year 1	30 minutes.
After Year 1	15 minutes.

Table C2. Large Notional Off-Facility Swaps Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating §§ 43.5(e)(2)(A) and (e)(2)(B))

Table C2 excludes off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations and those off-facility swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

Table C2 also designates the interim time delays for swaps described in § 43.5(c)(3).

ALL ASSET CLASSES

Yearly phase-in	Time delay for public dissemination
Year 1	30 minutes.
After Year 1	15 minutes.

Table C3. Large Notional Off-Facility Swaps Subject to the Mandatory Clearing Requirement in Which Neither Counterparty Is a Swap Dealer or Major Swap Participant (Illustrating §§ 43.5(e)(3)(A), (e)(3)(B), and (e)(3)(C))

Table C3 excludes off-facility swaps that are excepted from the mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations and those swaps that are required to be cleared under Section 2(h)(2) of the Act and Commission regulations but are not cleared.

Table C3 also designates the interim time delays for swaps described in § 43.5(c)(3).

ALL ASSET CLASSES

Yearly phase-in	Time delay for public dissemination
Year 1	4 hours.
Year 2	2 hours.
After Year 2	1 hour.

Table C4. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating §§ 43.5(f)(1), (f)(2) and (f)(3))

Table C4 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are exempt from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

Table C4 also designates the interim time delays for swaps described in § 43.5(c)(4).

INTEREST RATES, CREDIT, FOREIGN EXCHANGE, EQUITY ASSET CLASSES

Yearly phase-in	Time delay for public dissemination
Year 1	1 hour. However, if such swap includes a non-swap dealer/non-major swap participant counterparty that is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, then one hour immediately after execution; or if received later than one hour by the registered swap data repository, then public dissemination shall occur as soon as technologically practicable after the data is received.
Year 2	30 minutes.

INTEREST RATES, CREDIT, FOREIGN EXCHANGE, EQUITY ASSET CLASSES—Continued

Yearly phase-in	Time delay for public dissemination
	However, if such swap includes a non-swap dealer/non-major swap participant counterparty that is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, then 30 minutes immediately after execution; or if received later than 30 minutes by the registered swap data repository, then public dissemination shall occur as soon as technologically practicable after the data is received.
After Year 2	30 minutes.

Table C5. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement With at Least One Swap Dealer or Major Swap Participant Counterparty (Illustrating §§ 43.5(g)(1), (g)(2), and (g)(3))

Table C5 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are excepted from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

Table C5 also designates the interim time delays for swaps described in § 43.5(c)(5).

OTHER COMMODITY ASSET CLASS

Yearly phase-in	Time delay for public dissemination
Year 1	4 hours.
	However, if such swap includes a non-swap dealer/non-major swap participant counterparty that is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, then four hours immediately after execution; or if received later than four hours by the registered swap data repository, then public dissemination shall occur as soon as technologically practicable after the data is received.
Year 2	2 hours.
	However, if such swap includes a non-swap dealer/non-major swap participant counterparty that is not a financial entity as defined in Section 2(h)(7)(C) of the Act and Commission regulations, then two hours immediately after execution; or if received later than two hours by the registered swap data repository, then public dissemination shall occur as soon as technologically practicable after the data is received.
After Year 2	2 hours.

Table C6. Large Notional Off-Facility Swaps Not Subject to the Mandatory Clearing Requirement in Which Neither Counterparty Is a Swap Dealer or Major Swap Participant (Illustrating §§ 43.5(h)(1), (h)(2) and (h)(3))

Table C6 includes large notional off-facility swaps that are not subject to the mandatory clearing requirement or are exempt from such mandatory clearing requirement pursuant to Section 2(h)(7) of the Act and Commission regulations.

Table C6 also designates the interim time delays for swaps described in § 43.5(c)(6).

ALL ASSET CLASSES

Yearly phase-in	Time delay for public dissemination
Year 1	48 business hours.
Year 2	36 business hours.
After Year 2	24 business hours.

Issued in Washington, DC, on December 20, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations

Appendices to Real-Time Public Reporting of Swap Transaction Data—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule to implement a real-time, public reporting regime for swaps. This rule fulfills Congress' direction under the Dodd-Frank Wall Street Reform and Consumer Protection Act to bring public transparency to the entire swaps market for both cleared and uncleared swaps. This rule will give the public critical information on the pricing of transactions—similar to what has been working for decades in the securities and futures markets.

Real-time reporting introduces post-trade transparency to the swaps market, which lowers costs for market participants and consumers.

In response to commenters, the final rule provides for the phasing in of compliance dates and time delays based on market participant, place of execution and underlying asset. As directed by Congress, the final rule protects the anonymity of counterparties to a swap and takes into account the effect of the rule on market liquidity.

[FR Doc. 2011–33173 Filed 1–6–12; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2011–0435; FRL–9507–8]

RIN 2060–AR02

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to three national emission standards for hazardous air pollutants (NESHAP): National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; NESHAP for Pesticide Active Ingredient Production; and NESHAP for Polyether Polyols Production. For all three of these NESHAP rules, the EPA is proposing decisions concerning the following: residual risk reviews; technology reviews; emissions during periods of startup, shutdown and malfunction; standards for previously unregulated hazardous air pollutant emissions; and electronic reporting of performance test results.

DATES: *Comments.* Comments must be received on or before March 9, 2012. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 8, 2012.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by January 19, 2012, a public hearing will be held on February 8, 2012.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0435, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2011–0435.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2011–0435.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2011–0435, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies. 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 Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. Attention Docket ID No. EPA–HQ–OAR–2011–0435. 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 No. EPA–HQ–OAR–2011–0435. 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 avoid the use of special characters, 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/epahome/dockets.htm.*

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2011–0435. 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, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. on February 8, 2012 and will be held at the EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Mary Tom Kissell, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–4516. If a public hearing will be held, a notification will be posted on the following Web site: *http://www.epa.gov/ttn/oarpg/t3main.html.*

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Nick Parsons, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5372; fax number: (919) 541–0246; email address: *parsons.nick@epa.gov.* For specific information regarding the risk modeling methodology, contact Ms. Elaine Manning, Health and Environmental Impacts Division (C159–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5499; fax number: (919) 541–0840; email address: *manning.elaine@epa.gov.* For information about the applicability of these three national emission standards for hazardous air pollutants (NESHAP) to a particular entity, contact the appropriate person listed in Table 1 to this preamble.

TABLE 1—LIST OF THE EPA CONTACTS FOR THE RULES ADDRESSED IN THIS PROPOSED ACTION

NESHAP	OECA contact [1]	OAQPS contact [2]
NESHAP for Group IV Polymers and Resins	Tavara Culpepper, (202) 564–0902, *culpepper.tavara@epa.gov.*	Nick Parsons, (919) 541–5372, *parsons.nick@epa.gov.*
NESHAP for Pesticide Active Ingredient Production.	Tavara Culpepper, (202) 564–0902, *culpepper.tavara@epa.gov.*	Andrea Siefers, (919) 541–1185, *siefers.andrea@epa.gov.*
NESHAP for Polyether Polyols	Tavara Culpepper, (202) 564–0902, *culpepper.tavara@epa.gov.*	Andrea Siefers, (919) 541–1185, *siefers.andrea@epa.gov.*

[1] OECA stands for the EPA's Office of Enforcement and Compliance Assurance.
[2] OAQPS stands for the EPA's Office of Air Quality Planning and Standards.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations

Several acronyms and terms used to describe industrial processes, data inventories and risk modeling are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

ABS—Acrylonitrile Butadiene Styrene Resin
ADAF—Age-Dependent Adjustment Factors
AERMOD—Air Dispersion Model used by the HEM–3 Model
AEGL—Acute Exposure Guideline Levels
ASA/AMSAN—Acrylonitrile Styrene Resin/ Alpha Methyl Styrene Acrylonitrile Resin
BACT—Best Available Control Technology
CalEPA—California Environmental Protection Agency
CAA—Clean Air Act
CBI—Confidential Business Information
CDX—Central Data Exchange
CEDRI—Compliance and Emissions Data Reporting Interface
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
ERPG—Emergency Response Planning Guidelines
ERT—Electronic Reporting Tool
HAP—Hazardous Air Pollutants
HCl—Hydrochloric Acid
HI—Hazard Index
HEM–3—Human Exposure Model, Version 3
HON—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
HQ—Hazard Quotient
ICR—Information Collection Request
IRIS—Integrated Risk Information System
km—Kilometer
LAER—Lowest Achievable Emission Rate
LDAR—Leak Detection and Repair
MACT—Maximum Achievable Control Technology
MACT Code—Code within the NEI used to Identify Processes Included in a Source Category
MBS—Methyl Methacrylate Butadiene Styrene
MIR—Maximum Individual Risk
NAAQS—National Ambient Air Quality Standards
NAICS—North American Industry Classification System
NAS—National Academy of Sciences
NATA—National Air Toxics Assessment
NESHAP—National Emissions Standards for Hazardous Air Pollutants
NEI—National Emissions Inventory
NRC—National Research Council
NTTAA—National Technology Transfer and Advancement Act
OECA—Office of Enforcement and Compliance Assurance
OMB—Office of Management and Budget
P&R IV—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
PAI—Pesticide Active Ingredient
PB–HAP—Hazardous Air Pollutants known to be Persistent and Bio-Accumulative in the Environment
PCB—Polychlorinated Biphenyls
PCCT—Process Contact Cooling Tower
PEPO—Polyether Polyols
PET—Poly (Ethylene Terephthalate) Resin
PM—Particulate Matter
POM—Polycyclic Organic Matter
PRD—Pressure Relief Device
RACT—Reasonably Available Control Technology
RBLC—RACT/BACT/LAER Clearinghouse
REL—CalEPA Chronic Reference Exposure Level
RFA—Regulatory Flexibility Act
RfC—Reference Concentration
RfD—Reference Dose
RTR—Residual Risk and Technology Review
SAB—Science Advisory Board
SAN—Styrene Acrylonitrile Resin
SCC—Source Classification Codes
SOCMI—Synthetic Organic Chemical Manufacturing Industry
SOP—Standard Operating Procedures
SSM—Startup, Shutdown and Malfunction
THF—Tetrahydrofuran
TOSHI—Target Organ-Specific Hazard Index
TPA—Terephthalic Acid
tpy—Tons Per Year
TRIM—Total Risk Integrated Modeling System
TRIM.FaTE—EPA's Total Risk Integrated Methodology Fate, Transport and Ecological Exposure Model
TTN—Technology Transfer Network
UF—Uncertainty Factor
UMRA—Unfunded Mandates Reform Act
URE—Unit Risk Estimate
VOC—Volatile Organic Compounds
WWW—World Wide Web

Organization of this Document. The information in this preamble is organized as follows:

I. General Information
A. What is the statutory authority for this action?
B. Does this action apply to me?
C. Where can I get a copy of this document and other related information?
D. What should I consider as I prepare my comments for the EPA?
II. Background
A. What are the source categories addressed by this action?
B. What data collection activities were conducted to support this proposed action?
III. Analyses Performed
A. How did we address unregulated emissions sources?
B. How did we estimate risks posed by the source categories?
C. How did we consider the risk results in making decisions for this proposal?
D. How did we perform the technology review?
E. What other issues are we addressing in this proposal?
IV. Analytical Results and Proposed Decisions for the Group IV Polymers and Resins Source Categories
A. Acrylonitrile Butadiene Styrene Resin (ABS)
B. Styrene Acrylonitrile Resin (SAN)
C. Methyl Methacrylate Butadiene Styrene Resin (MBS)
D. Polystyrene Resin
E. Poly (ethylene terephthalate) Resin (PET)
V. Analytical Results and Proposed Decisions for Pesticide Active Ingredient Production
A. What are the results of the risk assessments?
B. What are the results of the technology review?
C. What other actions are we proposing?
VI. Analytical Results and Proposed Decisions for Polyether Polyols Production
A. What are the results of the risk assessments?
B. What are the results of the technology review?
C. What other actions are we proposing?
VII. Compliance Dates
VIII. Summary of Cost, Environmental and Economic Impacts
A. What are the affected sources?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
IX. Request for Comments
X. Submitting Data Corrections
XI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive

Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

A red-line version of the regulatory language that incorporates the proposed changes in this action is available in the docket.

I. General Information

A. What is the statutory authority for this action?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) 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) calls for 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 HAP. For major sources, these technology-based standards must reflect the maximum degree of emissions reductions of HAP 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 require 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 pollutants 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 sections 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 floors for existing sources can be less stringent than floors for new sources, but they cannot be 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, we 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 emissions 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 8 years, under CAA section 112(d)(6). In conducting this review, the EPA is not obliged to completely recalculate the prior MACT determination. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (DC Cir. 2008).

The second stage in standard-setting focuses on reducing any remaining (*i.e.,* ''residual'') risk according to CAA section 112(f). This provision requires, first, 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 this report (*Residual Risk Report to Congress,* EPA–453/R–99–001) in March 1999. Congress did not act in response to the report, thereby triggering the EPA's obligation under CAA section 112(f)(2) to analyze and address residual risk.

CAA section 112(f)(2) requires the EPA to determine, for source categories subject to certain MACT standards, whether those emissions standards provide an ample margin of safety to protect public health. 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 are sufficiently protective. *NRDC* v. *EPA,* 529 F.3d at 1083 (''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 [1] but must consider cost, energy, safety and other relevant factors in doing so.

Section 112(f)(2) of the CAA expressly preserves our use of the two-step process for developing standards to address any residual risk and our 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 first step in this process is the determination of acceptable risk. The second step provides for an ample margin of safety to protect public health, which is the level at which the standards are to be set (unless an even more stringent standard is necessary to prevent, taking into consideration costs,

[1] ''Adverse environmental effect'' is defined in CAA section 112(a)(7) 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.

energy, safety and other relevant factors, an adverse environmental effect).

The terms ''individual most exposed,'' ''acceptable level'' and ''ample margin of safety'' are not specifically defined in the CAA. However, CAA section 112(f)(2)(B) preserves the EPA's interpretation set out in the Benzene NESHAP, and the United States Court of Appeals for the District of Columbia Circuit in *NRDC* v. *EPA,* 529 F.3d 1077, concluded that the EPA's interpretation of subsection 112(f)(2) is a reasonable one. See *NRDC* v. *EPA,* 529 F.3d at 1083 (''[S]ubsection 112(f)(2)(B) expressly incorporates 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,* volume 1, p. 877 (*Senate debate on Conference Report*). We also notified Congress in the *Residual Risk Report to Congress* that we intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11).

In the Benzene NESHAP, we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive 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 facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The agency also stated that, ''The 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.'' The agency went on to conclude that ''estimated incidence would be weighed along with other health risk information in judging acceptability.'' As explained more fully in our *Residual Risk Report to Congress,* the EPA does not define ''rigid line[s] of acceptability,'' but rather considers broad objectives to be weighed with a series of other health measures and factors (EPA–453/R–99–001, p. ES–11). 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,'' (*Residual Risk Report to Congress,* p. 178, quoting *NRDC* v. *EPA,* 824 F.2d 1146, 1165 (DC Cir. 1987) (Vinyl Chloride Decision)) recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that the ''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 38045. 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 acknowledge 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 maximum individual lifetime cancer risk as a metric for determining acceptability, we acknowledged in the 1989 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 one million (one in 10 thousand) ''provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk (MIR), but does not constitute a rigid line for making that determination.'' *Id.* Further, in the Benzene NESHAP, we noted that, ''Particular 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 1989 Benzene NESHAP the following: ''In 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-kilometer (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-emissions of pollutants.'' *Id.*

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 explained in the Benzene NESHAP, ''[e]ven though the risks judged 'acceptable' by EPA in the first step of the Vinyl Chloride inquiry are already low, 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 CAA section 112.''

In *NRDC* v. *EPA,* 529 F.3d 1077, 1082 (DC Cir. 2008), the Court of Appeals held that CAA section 112(f)(2) ''incorporates EPA's 'interpretation' of the Clean Air Act from the Benzene Standard, and the text of this provision draws no distinction between carcinogens and non-carcinogens.'' Additionally, the Court held there is nothing on the face of the statute that limits the Agency's section 112(f) assessment of risk to carcinogens. *Id.* at 1081–82. In the NRDC case, the petitioners argued, among other things, that CAA section 112(f)(2)(B) applied only to non-carcinogens. The DC Circuit rejected this position, holding that the text of that provision ''draws no distinction between carcinogens and non-carcinogens,'' *Id.,* and that Congress' incorporation of the Benzene standard applies equally to carcinogens and non-carcinogens.

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. 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 CAA section 112(f). 54 FR 38046.

B. Does this action apply to me?

The NESHAP and associated regulated industrial source categories that are the subject of this proposal are listed in Table 2 to this preamble. Table 2 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action for the industrial source categories listed. These standards, and any changes considered in this rulemaking, would be directly applicable to sources as a Federal program. Thus, Federal, state, local and tribal government entities are not affected by this proposed action. The regulated categories affected by this proposed action include:

TABLE 2—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

NESHAP and source category	NAICS Code [1]	MACT Code [2]
Group IV Polymers and Resins		
Acrylic-Butadiene-Styrene Production	325211	1302
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [3]	325211	1317
Methyl Methacrylate-Butadiene-Styrene Production	325211	1318
Nitrile Resins Production [3]	325211	1342
Polyethylene Terephthalate Production	325211	1328
Polystyrene Production	325211	1331
Styrene-Acrylonitrile Production	325211	1338
Pesticide Active Ingredient Production	325199, 325320	0911
Polyether Polyols Production	325199	1625

[1] North American Industry Classification System.
[2] Maximum Achievable Control Technology.
[3] There are no longer any operating facilities in either the Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production or Nitrile Resins Production source categories, and none are anticipated to begin operation in the future. Therefore, this proposal does not address these source categories.

C. 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 proposal will also be available on the World Wide Web (WWW) through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The TTN provides information and technology exchange in various areas of air pollution control.

Additional information is available on the residual risk and technology review (RTR) web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* This information includes source category descriptions and detailed emissions and other data that were used as inputs to the risk assessments.

D. 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 comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Nick Parsons, c/o OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attn: Docket ID No. EPA–HQ–OAR–2011–0435.

II. Background

A. What are the source categories addressed by this action?

1. Group IV Polymers and Resins Production Source Categories

The National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins were promulgated on September 12, 1996 (61 FR 48208), and codified at 40 CFR part 63, subpart JJJ. The Group IV Polymers and Resins MACT standards apply to major sources and regulate HAP emissions from seven source categories: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET) and nitrile resin.

The Group IV Polymers and Resins MACT standards regulate HAP emissions resulting from the production of thermoplastics. A thermoplastic is a resin that softens with heat and rehardens to a rigid material upon cooling, without generally showing any change in the physical properties of the thermoplastic, even with repeated heating and cooling. Thermoplastics are composed of high-molecular-weight polymers which are synthesized from monomers; the thermoplastics covered

in these seven source categories, with one exception, use styrene monomer as the basic feedstock. The thermoplastics included in these source categories are produced via a polymerization/copolymerization process, in which monomers undergo intermolecular chemical bond formation to form a very large polymer molecule. Generally, the production of these polymers entails four processes: (1) Raw material (*i.e.,* solvent) storage and refining; (2) polymer formation in a reactor (either via the solution process, where monomers are dissolved in an organic solvent, or the emulsion process, where monomers are dispersed in water using a soap solution); (3) material recovery; and (4) finishing (*i.e.,* blending, aging, coagulation, washing and drying).

Sources of HAP emissions from thermoplastics production include raw material storage vessels, continuous and batch process vents, wastewater operations, heat exchangers and equipment leaks. The Group IV Polymers and Resins MACT standards include a combination of equipment standards and emission limits for the various emission sources, which vary in stringency in some cases among the source categories.

To meet the requirements of the Group IV Polymers and Resins MACT standards, the typical control devices used to reduce organic HAP emissions from process vents include flares, incinerators, absorbers, carbon adsorbers and condensers. In addition, emissions of hydrochloric acid (HCl) are controlled using scrubbers. Emissions from storage vessels are controlled by fixed roofs with closed vent systems routed to a control device. Emissions from wastewater are controlled by a variety of methods, including equipment modifications (*e.g.,* fixed roofs on storage vessels and oil water separators; covers on surface impoundments, containers and drain systems), treatment to remove the HAP (steam stripping, biological treatment), control devices and work practices. Emissions from equipment leaks and heat exchangers are typically reduced by leak detection and repair (LDAR) work practice programs and, in some cases, by equipment modifications. Each of the five Group IV Polymers and Resins source categories addressed in this proposal are discussed further below. Two of the Group IV Polymers and Resins source categories, MABS and nitrile resins, no longer have any operating facilities in the U.S. and we do not anticipate any will begin to operate in the future. Therefore, this proposal does not address these source categories.[2]

a. Acrylonitrile Butadiene Styrene Resin (ABS)

ABS consist of a terpolymer of acrylonitrile, butadiene and styrene and can be synthesized by emulsion, suspension and continuous mass polymerization. The majority of ABS resin production is by batch emulsion. Typical products made from ABS resins are piping, refrigerator door liners and food compartments, automotive components, telephones, luggage and cases, toys, mobile homes and margarine tubs.

We identified five currently operating ABS facilities subject to the Group IV Polymers and Resins MACT standards. Styrene, acrylonitrile and 1,3-butadiene account for the majority of the HAP emissions from the ABS production processes at these facilities (approximately 156 tpy and 76 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of 23 other HAP. We estimate that the MACT-allowable emissions (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standards) from this source category are approximately equal to the reported, actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

b. Styrene Acrylonitrile Resin (SAN)

SAN resins are copolymers of styrene and acrylonitrile, and they may be synthesized by emulsion, suspension and continuous mass polymerization; however, the majority of production is by batch emulsion. Typical uses include automobile instrument panels and interior trim and housewares.

We identified two currently operating SAN facilities subject to the Group IV Polymers and Resins MACT standards. Ethyl benzene and styrene account for the majority of the HAP emissions from the SAN production processes at these facilities (approximately 2 tpy and 82 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of methylene chloride and acrylonitrile. We estimate that the MACT-allowable emissions (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standards) from this source category are approximately equal to the reported, actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

c. Methyl Methacrylate Butadiene Styrene Resin (MBS)

MBS resins are prepared by grafting methyl methacrylate and styrene onto a styrene-butadiene rubber in an emulsion process. The product is a two-phase polymer used as an impact modifier for rigid polyvinyl chloride products. These products are used for applications in packaging, building and construction.

We identified two currently operating MBS facilities subject to the Group IV Polymers and Resins MACT standards. Methyl methacrylate and 1,3-butadiene account for the majority of the HAP emissions from the MBS production processes at these facilities (approximately 4 tpy and 75 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of ethyl acrylate, methanol, styrene and HCl. We estimate that the MACT-allowable emissions (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standards) from this source category are approximately equal to the reported, actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

d. Polystyrene Resin

Polystyrene resins are those produced by the polymerization of styrene monomer. This type of resin can be produced by three methods: (1) Suspension polymerization (operated in batch mode); (2) mass (operated in a continuous mode); and (3) emulsion process (operated in a continuous mode). The mass and suspension methods are the most commercially

[2] It is the EPA's practice in these circumstances to not conduct unnecessary risk and technology reviews for source categories that will no longer have sources operating in the U.S. See, *e.g.,* 75 FR 65068, 65075, n.5 (Oct. 21, 2010) and 76 FR 22566, 22575, n.5 (Apr. 21, 2011).

significant, whereas use of the emulsion process has decreased significantly since the mid-1940s. The uses for polystyrene resin include packaging and one-time use, expandable polystyrene beads, electronics, resellers and compounding, consumer and institutional products and furniture, building or construction uses. A wide variety of consumer and construction products are made from polystyrene resins, including disposable dinnerware, shower doors, light diffusers, soap dishes, insulation board, food containers, drain pipes, audio and video tape, picnic coolers, loose fill packaging and tubing.

We identified 11 currently operating polystyrene resin facilities subject to the Group IV Polymers and Resins MACT standards. Styrene accounts for the majority of the HAP emissions from the polystyrene resin production processes at these facilities (approximately 85 tpy and 94 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of eight other HAP. We estimate that the MACT-allowable emissions (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standards) from this source category are approximately equal to the reported, actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

e. Poly (Ethylene Terephthalate) Resin (PET)

Three different types of resins are made by sources covered by the PET source category: Solid-state resins (PET bottle grade resins), polyester film and engineering resins. They are all thermoplastic linear condensation polymers based on dimethyl terephthalate or terephthalic acid (TPA). PET meltphase polymer is used in the production of all three of these resins. PET production can occur via either a batch or continuous process. The most common use of PET solid-state resins is in soft drink bottles, and some industrial fiber-graded polyester (*e.g.,* for tire cord) is also produced from PET solid-state resins. The most common uses of PET film are photographic film and magnetic media. PET is used extensively in the manufacture of synthetic fibers (*i.e.,* polyester fibers), which compose the largest segment of the synthetic fiber industry. The most common uses of polyester fibers are apparel, home furnishings, carpets, fiberfill and other industrial processes.

We identified 15 currently operating PET facilities subject to the Group IV Polymers and Resins MACT standards. Ethylene glycol, acetaldehyde and methanol account for the majority of the HAP emissions from the PET production processes at these facilities (approximately 1,048 tpy and 89 percent of the total HAP emissions by mass). These facilities also reported relatively small emissions of 34 other HAP. We estimate that the MACT-allowable emissions (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standards) from this source category are approximately equal to the reported, actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

2. Pesticide Active Ingredient Production

The National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production were promulgated on June 23, 1999 (64 FR 33549), and codified at 40 CFR part 63, subpart MMM. The Pesticide Active Ingredient (PAI) MACT standards apply to major sources and regulate HAP emissions resulting from the production of active ingredients in insecticides, herbicides, fungicides and related products. Typically, the active ingredients subject to the PAI MACT standards are subsequently formulated with inert ingredients to create end-product pesticides for application. The MACT standards do not apply to the formulation of end-product pesticides or to other types of active ingredients, such as biocides.

PAI are made from a number of raw materials in a variety of processes. A process often consists of several steps, which may include reaction, crystallization, washing, solvent extraction, distillation and/or drying.

The HAP emission sources at PAI production facilities include storage vessels, process vents, equipment leaks, wastewater systems, heat exchange systems, bag dumps and product dryers. In the production of PAI, HAP are used primarily as reactants or extraction solvents; some of the PAI products are also HAP. The MACT standards for PAI production include a combination of equipment standards and emission limits for the various emission sources.

To meet the requirements of the PAI MACT standards, the typical control devices used to reduce emissions from process vents include flares, incinerators, absorbers, carbon adsorbers and condensers. In addition, emissions of HCl are controlled using scrubbers. Emissions from storage vessels are controlled by fixed roofs with closed vent systems routed to a control device. Emissions from wastewater are controlled by a variety of methods, including equipment modifications (*e.g.,* fixed roofs on storage vessels and oil water separators; covers on surface impoundments, containers and drain systems), treatment to remove the HAP (steam stripping, biological treatment), control devices and work practices. Emissions from equipment leaks and heat exchangers are typically reduced by LDAR work practice programs and, in some cases, by equipment modifications. Fabric filters are used to control particulate matter (PM) emissions from product dryers and bag dumps.

We identified 17 currently operating facilities subject to the PAI MACT standards. Toluene, methanol and methylene chloride account for the majority of the HAP emissions from the PAI production processes at these facilities (approximately 177 tpy and 51 percent of the total HAP emissions by mass). A variety of chemicals are used in the production of PAI, and these facilities also reported emissions of 67 other HAP. We estimate that the actual emissions level is representative of the MACT-allowable level (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standards) for all emissions sources except process vents. As it is possible that the capture systems and control devices used at some facilities achieve greater emission reductions than what is required by the NESHAP for process vents, the MACT-allowable level for organic HAP emissions could be up to five times the actual emissions and the MACT-allowable level for chlorine and HCl emissions could be up to six times the actual emissions from this source category. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

3. Polyether Polyols Production

The National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production were promulgated on June 1, 1999 (64 FR 29419), and codified at 40 CFR part 63, subpart PPP. The Polyether Polyols (PEPO) MACT standards apply to major sources and regulate HAP emissions resulting from the production of chemical products with repeating ether linkages (*i.e.,* -R–O–R-) formed by the reaction of ethylene oxide, propylene oxide or other cyclic ethers with compounds having one or more reactive hydrogens. (This definition excludes materials regulated as glycols or glycol ethers under the National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (HON).) PEPO do not have significant uses of their own but are used to make a variety of other products. Urethane grade PEPO (*i.e.,* those that are free of water) are used as raw material in the production of polyurethanes, including slabstock and molded flexible foams, rigid foams and other polyurethanes, including microcellular products, surface coatings, elastomers, fibers, adhesives and sealants. Nonurethane PEPO are used as surfactants, lubricants, degreasing agents, hydraulic fluids, cosmetics and pharmaceuticals.

PEPO can be produced by either polymerization of epoxides (*i.e.,* a three-membered cyclic ether, such as ethylene oxide or propylene oxide) or tetrahydrofuran (THF). The former process is usually conducted as a batch process, while production of polyols using THF is generally a continuous process. Ethylene oxide and propylene oxide are both HAP, but THF is not. For the MACT regulation, two subcategories of PEPO were created based on the use of either epoxides or THF in polymerization.

The HAP emission sources at PEPO production facilities include process vents, storage vessels, equipment leaks and wastewater, and some facilities have cooling towers or other heat exchangers. In the production of PEPO, HAP are used primarily as reactants or extraction solvents; some of the PEPO products are also HAP compounds. The MACT standards for PEPO production include emission limits for process vents, a combination of equipment standards and work practices for storage vessels, wastewater and equipment leaks, and work practice standards for cooling towers.

To meet the requirements of the PEPO MACT standards, the typical control devices used to reduce emissions from storage vessels are fixed roofs with closed vent systems routed to a control device. Emissions from wastewater are controlled by a variety of methods, including equipment modifications (*e.g.,* fixed roofs on storage vessels and oil water separators; covers on surface impoundments, containers and drain systems), treatment to remove the HAP (steam stripping, biological treatment), control devices and work practices. Emissions from equipment leaks and heat exchangers are typically reduced by LDAR work practice programs and, in some cases, by equipment modifications. Controls for process vents for facilities that use THF as a reactant generally use scrubbers. Epoxide emissions from process vents are typically controlled by scrubbers or combustion devices, but some facilities use extended cookout as a pollution prevention technique. Extended cookout reduces the amount of unreacted ethylene oxide and/or propylene oxide (epoxides) in the reactor. This is accomplished by allowing the product to react for a longer time period, thereby having less unreacted epoxides and reducing epoxides emissions that may have otherwise occurred. Emissions from catalyst extraction and other processes are generally vented to the same control device as the epoxide emissions or are minimal if the extended cookout practice is used.

We identified 23 currently operating facilities subject to the PEPO MACT standards. Ethylene glycol, ethylene oxide and propylene oxide account for the majority of the HAP emissions from the PEPO production processes at these facilities (approximately 269 tpy and 61 percent of the total HAP emissions by mass). A variety of chemicals are used in the production of PEPO, and these facilities also reported emissions of 81 other HAP. We estimate that the actual emissions level is representative of the MACT-allowable level (*i.e.,* the maximum emission levels allowed if in compliance with the MACT standards) for all emissions sources except batch process vents and process vents that use organic HAP in catalyst extraction at units producing PEPO products using epoxides. As it is possible that the capture systems and control devices used at some facilities achieve greater emission reductions in the organic non-epoxide HAP than what is required by the NESHAP for these process vents, the MACT-allowable level for organic non-epoxide HAP emissions could be up to five times the actual emissions from this source category. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

B. What data collection activities were conducted to support this proposed action?

To perform the risk assessments for these source categories, we developed data sets for these seven source categories (five Group IV Polymers and Resins categories, PAI and PEPO) based on information in the 2005 National Emissions Inventory (NEI) (available at *http://www.epa.gov/chief/net/2005inventory.html*). The NEI is a database that contains information about sources that emit criteria air pollutants, their precursors and HAP. The database includes estimates of annual air pollutant emissions from point, nonpoint and mobile sources in the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. The EPA collects this information and releases an updated version of the NEI database every 3 years. We reviewed the NEI data and made changes where necessary to ensure the proper facilities were included and to ensure the proper processes were allocated to each source category. We also reviewed the emissions and other data to identify data anomalies that could affect risk estimates, such as whether a pollutant was expected to be emitted from facilities in a source category or whether an emission point was located within a facility's fenceline. The NEI data were also reviewed by industry trade groups, including the American Chemistry Council and the Society of Chemical Manufacturers and Affiliates. Where the EPA received new information in response to these data review by industry, including updated emissions data and process information, facility closure information and information that some facilities were not subject to the PAI, PEPO or Group IV Polymers and Resins MACT standards, we revised the NEI data where we concluded the comments supported such adjustment. We obtained updated emissions data and process information, found that some facilities had closed and that others were no longer subject to the PAI, PEPO or Group IV Polymers and Resins MACT standards. In general, we found that emissions from these source categories had decreased from the values reported in the 2005 NEI, due to factors such as the installation of additional controls at the facility,

duplication of emissions in the inventory, or emissions misappropriated to the wrong source category. We used this reviewed and revised data set to conduct the risk assessment and other analyses for each source category. Due to the uncertainties in the data (*e.g.,* most emission estimates in the data set are the result of emission factors rather than test data), along with our general finding that emissions were less than those reported in the 2005 NEI, we believe that the data set provides a conservative estimate of the risk from these source categories. Further details on the changes made to the 2005 NEI data can be found in the memorandum, *Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Pesticide Active Ingredients, Polyether Polyols, and Group IV Polymers and Resins,* which is in the docket for this rulemaking.

To conduct the technology review, we primarily relied on information downloaded from the reasonably available control technology (RACT)/best available control technology (BACT)/lowest achievable emission rate (LAER) Clearinghouse (RBLC) for processes in Agricultural Chemical Manufacturing (for PAI controls), Polymer and Resin Production (for Group IV Polymers and Resins controls) and the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (for PAI, PEPO and Group IV Polymers and Resins controls) with permits dating back to the promulgation dates of each MACT regulation.

To evaluate unregulated emission points in the Group IV Polymers and Resins MACT standards, we relied on existing data submitted to the EPA during development of the MACT, information submitted after proposal of the MACT standards and information submitted with requests for reconsideration of standards.

III. Analyses Performed

A. How did we address unregulated emissions sources?

For the Group IV Polymers and Resins source categories, we identified one subcategory—PET sources using a continuous TPA high viscosity multiple end finisher process—consisting of one facility that was not subject to standards for process contact cooling towers (PCCT) or equipment leaks. While the promulgated rule includes provisions for PCCT for this subcategory, the facility is not required to comply with these provisions due to an indefinite stay in the compliance date provisions issued by the EPA in response to a request to reconsider the emission limits for this equipment. For this facility, we also identified the absence of a standard for equipment leaks, which in the absence of an enforceable standard is a potential significant emissions source for this facility, even though its operators currently voluntarily conduct their own LDAR program. For the one facility in this subcategory, we are proposing to set standards for PCCT and equipment leaks under CAA section 112(d)(2) and (d)(3) in this action. The results and proposed decisions based on the analyses performed pursuant to CAA section 112(d)(2) and 112(d)(3) are presented in section IV.E.1 of this preamble. While we also identified the absence of a standard for wastewater for the acrylonitrile styrene resin/alpha methyl styrene acrylonitrile resin (ASA/AMSAN) subcategory of the SAN source category, the only facility in this subcategory has permanently closed, and no new ASA/AMSAN operations are expected to begin operation in the United States. As stated previously and as established in prior risk and technology review rulemakings, it is not EPA's practice to unnecessarily conduct risk and technology reviews for source categories that will no longer have sources operating in the United States. Therefore, we are not addressing this emission point in this proposed action.

B. How did we estimate risks posed by the source categories?

The EPA conducted risk assessments that provided estimates of the MIR posed by the HAP emissions from each source in each source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects. The assessments also provided estimates of the distribution of cancer risks within the exposed populations, cancer incidence and an evaluation of the potential for adverse environmental effects for each source category. The risk assessments 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 7 Source Categories.* 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; they are also consistent with the key recommendations contained in that report.

1. Establishing the Nature and Magnitude of Actual Emissions and Identifying the Emissions Release Characteristics

As discussed in section II.B, we created the preliminary data sets for the seven source categories using data in the 2005 NEI, supplemented by data collected from industry or industry trade associations when available.

2. Establishing the Relationship Between Actual Emissions and MACT–Allowable Emissions Levels

The available emissions data in the NEI and from other sources typically represent the mass of HAP actually emitted during the specified annual time period. These ''actual'' emission levels can be lower than the emission levels a facility might be allowed to emit and still 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. This represents the highest emissions level that could be emitted by facilities without violating the MACT standards.

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 HON 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 because these risks reflect the maximum level sources could emit and still comply with national emission standards. We continue to take this view, for the reasons presented in those discussions. But 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. (54 FR 38044, September 14, 1989.) We also continue to take this view, for the reasons explained in those prior discussions.

As described above, the actual emissions data were compiled based on the NEI and information gathered from facilities through industrial trade associations. To estimate emissions at the MACT-allowable level, we developed a ratio of MACT-allowable to actual emissions for each emissions source type in each source category, based on the level of control required by the MACT standards compared to the level of reported actual emissions and

available information on the level of control achieved by the emissions controls in use. For example, if there was information to suggest several facilities in a source category were controlling storage tank emissions by 98 percent, while the MACT standards required only 92-percent control, we would estimate that MACT-allowable emissions from these emission points could be as much as four times higher (8-percent allowable emissions compared with 2 percent actually emitted), and the ratio of MACT-allowable to actual would be 4:1 for this emission point type at the facilities in this source category. After developing these ratios for each emission point type in each source category, we next applied these ratios on a facility-by-facility basis to the maximum chronic risk values from the inhalation risk assessment to obtain facility-specific maximum risk values based on MACT-allowable emissions. Further explanation of this evaluation is provided in the technical document, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* which is available in the docket for this action.

3. Conducting Dispersion Modeling, Determining Inhalation Exposures, and Estimating Individual and Population Inhalation Risks

Both long-term and short-term inhalation exposure concentrations and health risks from each facility in the source categories addressed in this proposal were estimated using the Human Exposure Model (HEM) (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three of the primary risk assessment activities listed above: (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 km of the modeled sources; and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The dispersion model used by HEM–3 is AERMOD, which is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities.[3] 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 (1991) of hourly surface and upper air observations for 189 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[4] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2000). In addition, the census library includes the elevation and controlling hill height for each census block, 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 concentration of each of the 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 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), which 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).[5] 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 EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

We note here that several carcinogens have a mutagenic mode of action.[6] Of these compounds, polycyclic organic matter (POM) is emitted by facilities in the PEPO and PET source categories, and vinyl chloride is emitted by facilities in the PEPO and the PAI source categories. For these compounds, the age-dependent adjustment factors (ADAF) described in the EPA's *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*[7] were applied. This adjustment has the effect of increasing the estimated lifetime risks for these pollutants by a factor of 1.6.[8] In addition, the EPA expresses carcinogenic potency for compounds in the POM group in terms of benzo[a]pyrene equivalence, based on evidence that carcinogenic POM have the same mutagenic mechanism of action as does benzo[a]pyrene. For this reason, the EPA's Science Policy Council[9] recommends applying the *Supplemental Guidance* to all carcinogenic polycyclic aromatic hydrocarbons for which risk estimates are based on relative potency. Accordingly, we have applied the ADAF to benzo[a]pyrene equivalent portion of all POM mixtures.

Incremental individual lifetime cancer risks associated with emissions from the source categories were estimated 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

[3] 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).

[4] A census block is generally the smallest geographic area for which census statistics are tabulated.

[5] The IRIS information is available at *http://www.epa.gov/IRIS.*

[6] U.S. EPA, 2006. Performing risk assessments that include carcinogens described in the *Supplemental Guidance* as having a mutagenic mode of action. *Science Policy Council Cancer Guidelines Implementation Workgroup Communication II:* Memorandum from W.H. Farland, dated June 14, 2006. *http://epa.gov/osa/spc/pdfs/CGIWGCommunication_II.pdf.*

[7] U.S. EPA, 2005. *Supplemental Guidance for Assessing Early-Life Exposure to Carcinogens.* EPA/630/R–03/003F. *http://www.epa.gov/ttn/atw/childrens_supplement_final.pdf.*

[8] Only one of these mutagenic compounds, benzo[a]pyrene, is emitted by any of the sources covered by this proposal.

[9] U.S. EPA, 2005. *Science Policy Council Cancer Guidelines Implementation Workgroup Communication I:* Memorandum from W.H. Farland, dated October 4, 2005, to Science Policy Council. *http://www.epa.gov/osa/spc/pdfs/canguid1.pdf.*

carcinogenic potential [10]) emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of any source were also estimated for the source categories as part of these assessments by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044) and the limitations of Gaussian dispersion models, including AERMOD.

To assess risk of noncancer 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 level, which is either the EPA reference concentration (RfC), 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 for chronic dose-response values: (1) The Agency for Toxic Substances and Disease Registry Minimum Risk Level, which is defined as ''an estimate of daily human exposure to a substance that is likely to be without an appreciable risk of adverse effects (other than cancer) over a specified duration of exposure''; (2) the CalEPA Chronic Reference Exposure Level (REL), which is defined as ''the concentration level 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.

Screening estimates of acute exposures and risks were also evaluated for each of the HAP at the point of highest off-site exposure for each facility (*i.e.,* not just the census block centroids), assuming that a person is located at this spot at a time when both the peak (hourly) emission rates from each emission point at the facility and worst-case dispersion conditions occur. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, acute HQ values were calculated using best available, short-term health threshold 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 emission 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.'' Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the medical and toxicological literature. Acute REL values are designed to protect the most sensitive sub-populations (*e.g.,* asthmatics) by the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL value 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/opptintr/aegl/pubs/sop.pdf*),[11] ''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.'' 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 8 hours.'' The document lays out the purpose and objectives of AEGL by stating (page 21) 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.'' In detailing the intended application of AEGL values, the document states (page 31) 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.''

The AEGL–1 value is then specifically defined as ''the airborne concentration of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.'' The document also notes (page 3) 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.'' Similarly, the document defines AEGL–2 values as ''the airborne concentration (expressed as ppm or milligrams per cubic meter (mg/m^3) 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.''

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's document titled, *Emergency Response Planning Guidelines (ERPG) Procedures and Responsibilities* (*http://www.aiha.org/1documents/committees/ERPSOPs2006.pdf*), which states that, ''Emergency Response Planning Guidelines were developed for emergency planning and are intended as

[10] 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 the 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.*

[11] NAS, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals,* page 2.

health-based guideline concentrations for single exposures to chemicals.''[12] 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.'' 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 1 hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action.''

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, higher severity level AEGL–2 or ERPG–2 values are compared 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 similar to the corresponding ERPG–1 values, and AEGL–2 values are often similar 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 emission rates by a default factor to cover routinely variable emissions. We choose the factor to use based on process knowledge and engineering judgment and with awareness of a Texas study of short-term emissions variability, which showed that most peak emission events in a heavily-industrialized 4-county area (Harris, Galveston, Chambers and Brazoria Counties, Texas) were less than twice the annual average hourly emission rate. The highest peak emissions event was 74 times the annual average hourly emission rate, and the 99th percentile ratio of peak hourly emissions rate to the annual average hourly emissions rate was 9.[13] This analysis is provided in the *Draft Residual Risk Assessment for 7 Source Categories* report, which is available in the docket for this action. 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 these source categories, a factor of 10 was applied to all emissions, with two exceptions. For certain facilities with volatile organic compound (VOC) emissions greater than 876 tpy and for several facilities with emissions from equipment leaks, a factor of two was applied. A further discussion of why this factor was chosen can be found in the memorandum, *Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Pesticide Active Ingredients, Polyether Polyols, and Group IV Polymers and Resins,* available in the docket for this rulemaking.

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, acute impacts were deemed negligible and no further analysis was performed. In the 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. The data refinements considered include using a peak-to-mean hourly emissions ratio based on source category-specific knowledge or data (rather than the default factor of 10) and using the site-specific facility layout to distinguish facility property from an area where the public could be exposed. 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 emission 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. However, we recognize that having this level of data is rare, hence our use of 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,[14] we generally examine a wider range of available acute health metrics (*e.g.,* REL, AEGL) than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement 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[15] for HAP have been developed, we consider additional acute values (*i.e.,* occupational and international values) to provide a more complete risk characterization.

4. Conducting Multipathway Exposure and Risk Screening

The potential for significant human health risks due to exposures via routes other than inhalation (*i.e.,* multipathway exposures) and the potential for adverse environmental impacts were evaluated in a two-step process. In the first step, we determined whether any facilities emitted any HAP known to be persistent and bio-accumulative in the environment (PB–HAP). There are 14 PB–HAP compounds or compound classes identified for this screening in the EPA's Air Toxics Risk Assessment Library (available at *http://www.epa.gov/ttn/fera/risk_atra_vol1.html*). They are cadmium compounds, chlordane, chlorinated dibenzodioxins and furans, dichlorodiphenyldichloroethylene, heptachlor, hexachlorobenzene, hexachlorocyclohexane, lead compounds, mercury compounds, methoxychlor, polychlorinated biphenyls (PCB), POM, toxaphene and trifluralin.

[12] *ERP Committee Procedures and Responsibilities.* 1 November, 2006. American Industrial Hygiene Association.

[13] See *http://www.tceq.state.tx.us/compliance/field_ops/eer/index.html* or docket to access the source of these data.

[14] 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.*

[15] 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 on-line at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=211003.*

In the second step of the screening process, we determined whether the facility-specific emission rates of each of the emitted PB–HAP were large enough to create the potential for significant non-inhalation human or environmental risks under reasonable worst-case conditions. To facilitate this step, we have developed emission rate thresholds for several of these PB–HAP using a hypothetical worst-case 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 hypothetical screening scenario was subjected to a sensitivity analysis to ensure that its key design parameters were established such that environmental media concentrations were not underestimated (*i.e.,* to minimize the occurrence of false negatives or results that suggest that risks might be acceptable when, in fact, actual risks are high) and to also minimize the occurrence of false positives for human health endpoints. We call this application of the TRIM.FaTE model TRIM-Screen. The facility-specific emission rates of each of the PB–HAP in each source category were compared to the TRIM-Screen emission threshold values for each of these PB–HAP to assess the potential for significant human health risks or environmental risks via non-inhalation pathways.

5. Assessing Risks Considering Emissions Control Options

In addition to assessing baseline inhalation risks and screening for potential multipathway risks, for some source categories, we also estimated risks considering the potential emission reductions that would be achieved by the particular control options under consideration. In these cases, the expected emissions reductions were applied to the specific HAP and emission points in the source category dataset to develop corresponding estimates of risk reductions.

6. Conducting Other Risk-Related Analyses: Facility-Wide Assessments

To put the source category risks in context, we examined 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, for each facility that includes one or more sources from a source category under review, we examined the HAP emissions not only from that source category, but also emissions of HAP from all other emission sources at the facility. The emissions data for generating these ''facility-wide'' risks were obtained from the 2005 NEI. 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 seven source categories addressed in this proposal. 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 risk documentation available through the docket for this action provides all facility-wide risks and the percentage of source category contribution for all source categories assessed.

The methodology and results of the facility-wide analyses for each source category are included in the residual risk documentation as referenced in sections IV though VI of this preamble, which is available in the docket for this action.

7. Considering Uncertainties in Risk Assessment

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for the source categories addressed in this proposal. Although uncertainty exists, we believe the approach taken, which used conservative tools and assumptions, ensures that our decisions are health-protective. A brief discussion of the uncertainties in the emissions data sets, dispersion modeling, inhalation exposure estimates and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the risk assessment documentation (*Draft Residual Risk Assessment for 7 Source Categories* (September 2011)), which is available in the docket for this action.

a. Uncertainties in the Emissions Data Sets

Although the development of the RTR data sets 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 data sets are accurate, errors in estimating emissions values and other factors. The emission values considered in this analysis generally are annual totals that do not reflect short-term fluctuations during the course of a year or variations from year to year. In contrast, the estimates of peak hourly emission rates for the acute effects screening assessment were based on emission adjustment factors applied to the average annual hourly emission rates (the default factor is 10 for the initial screening), which are intended to account for emission fluctuations due to normal facility operations. In some cases, more refined estimates, using lower emission adjustment factors that reflected consideration of category-specific information, were used for source categories where the screening estimates did not ''screen out'' all sources and more specific information was available.

b. Uncertainties in Dispersion Modeling

While the analysis employed the EPA's recommended regulatory dispersion model, AERMOD, we recognize that there is uncertainty in ambient concentration estimates associated with any model, including AERMOD. Where possible, model options (*e.g.,* rural/urban, plume depletion, chemistry) were selected to provide an overestimate of ambient air concentrations of the HAP rather than underestimates. However, because of practicality and data limitation reasons, some factors (*e.g.,* meteorology, building downwash) have the potential in some situations to overestimate or underestimate ambient impacts. For example, meteorological data were taken from a single year (1991), and facility locations can be a significant distance from the site where these data were taken. Despite these uncertainties, we believe that at off-site locations and census block centroids, the approach considered in the dispersion modeling analysis should generally yield overestimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The effects of human mobility on exposures were not included in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[16] Not considering short or long-term population mobility does not bias the estimate of the theoretical MIR, 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

[16] Short-term mobility is movement from one microenvironment 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.

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-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 it is an unbiased estimate of average risk and incidence.

The assessments evaluate the cancer inhalation risks associated with continuous pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emissions 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 United States facilities) will influence the risks posed by a given 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 rare cases, where a facility maintains or increases its emission levels beyond 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the risks could potentially be underestimated. Annual cancer incidence estimates from exposures to emissions from these sources would not be affected by uncertainty in the length of time emissions sources operate.

The exposure estimates used in these analyses assume chronic exposures to ambient 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 HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, these levels are typically lower. This factor has the potential to result in an overstatement of 25 to 30 percent of exposures.[17]

In addition to the uncertainties highlighted above, there are several other factors specific to the acute exposure assessment. 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 human activity patterns. In this assessment, we assume that individuals remain for 1 hour at the point of maximum ambient concentration as determined by the co-occurrence of peak emissions and worst-case meteorological conditions. 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 of worst-case impact.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the reference values used in our risk assessments for cancer effects from chronic exposures and noncancer 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;* 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 variabilities in dose-response relationships is given in the residual risk documentation, 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).[18] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[19] 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 noncancer reference (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 daily oral exposure (RfD) or of a continuous inhalation exposure (RfC) 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), which includes consideration of both uncertainty and variability. 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,[20] *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

[17] U.S. EPA. *National-Scale Air Toxics Assessment for 1996.* (EPA 453/R–01–003; January 2001; page 85.)

[18] IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[19] 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.

[20] 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.*

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. 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 the risk characterization as potential uncertainties.

Although every effort is made to identify peer-reviewed reference values for cancer and noncancer effects for all pollutants emitted by the sources included in this assessment, some pollutants have no peer-reviewed reference values for cancer, chronic noncancer or acute effects. Since exposures to these pollutants cannot be included in a quantitative risk estimate, an understatement of risk for these pollutants at environmental exposure levels is possible. For a group of compounds that are either unspeciated or do not have reference values for every individual compound (*e.g.,* glycol ethers) we conservatively use the most protective reference value to estimate risk from individual compounds in the group of compounds.

Additionally, chronic reference values for several of the compounds included in this assessment are currently under EPA IRIS review, and revised assessments may determine that these pollutants are more or less potent than the current value. We may re-evaluate residual risks for the final rulemaking if these reviews are completed prior to our taking final action for these source categories and if a dose-response metric changes enough to indicate that the risk assessment supporting this notice may significantly understate human health risk.

e. Uncertainties in the Multipathway and Environmental Effects Screening Assessment

We generally assume that when exposure levels are not anticipated to adversely affect human health, they also are not anticipated to adversely affect the environment. For each source category, we generally rely on the site-specific levels of PB–HAP emissions to determine whether a full assessment of the multipathway and environmental effects is necessary. Our screening methods use worst-case scenarios to determine whether multipathway impacts might be important. The results of such a process are biased high for the purpose of screening out potential impacts. Thus, when individual pollutants or facilities screen out, we are confident that the potential for multipathway impacts is negligible. On the other hand, when individual pollutants or facilities do not screen out, it does not mean that multipollutant impacts are significant, only that we cannot rule out that possibility.

C. How did we consider the risk results in making decisions for this proposal?

As discussed in the previous section of this preamble, we apply a two-step process for determining whether to develop standards 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 level on maximum individual lifetime [cancer] risk (MIR) [21] of approximately one in 10 thousand [*i.e.,* 100 in 1 million].'' 54 FR 38045. In the second step of the process, the EPA determines what level of the standard is needed to provide an ample margin of safety ''in consideration of all health information, including the number of persons at risk levels higher than approximately one in one million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' *Id.*

In past residual risk actions, the EPA presented and considered a number of human health risk metrics associated with emissions from the category under review, including: The MIR; the numbers of persons in various risk ranges; cancer incidence; the maximum noncancer HI; and the maximum acute noncancer hazard. See, *e.g.,* 75 FR 65068, 65072–74 (Oct. 21, 2010), and 76 FR 22566, 22575 (Apr. 21, 2011). In estimating risks, the EPA considered sources under review that are located near each other and that affect the same population. The EPA developed risk estimates based on the actual emissions from the source category under review as well as based on the maximum emissions allowed pursuant to the source category MACT standards. The EPA also discussed and considered risk estimation uncertainties. The EPA is providing this same type of information in support of these actions.

The agency is considering all available health information to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). Specifically, 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.

[21] Although defined as ''maximum individual risk,'' MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk were an individual exposed to the maximum level of a pollutant for a lifetime.

Similarly, with regard to making the ample margin of safety determination, as stated in the Benzene NESHAP, ''[i]n the ample margin decision, 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 agency acknowledges that the Benzene NESHAP provides flexibility regarding what factors the EPA might consider in making our determinations and how they might be weighed for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that: ''The 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 noncancer 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.' '' 54 FR 38057.

Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explains ''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 Benzene NESHAP states 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.

D. How did we perform the technology review?

Our technology review is focused on the identification and evaluation of ''developments in practices, processes, and control technologies.'' If a review of available information identifies such developments, then we conduct an analysis of the technical feasibility of requiring the implementation of these developments, along with the impacts (costs, emission reductions, risk reductions, *etc.*). We then make a decision on whether it is necessary to amend the regulation to require compliance with revised standards in light of these developments. This has become our standard practice in conducting technology reviews. See, *e.g.,* 75 FR 65068, 65083 (October 21, 2010).

Based on specific knowledge of each source category, we began by identifying known developments in practices, processes and control technologies. For the purpose of 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 MACT development;
- Any improvements in add-on control technology or other equipment (that was identified and considered during MACT development) that could result in significant additional emission reduction;
- Any work practice or operational procedure that was not identified and considered during MACT development; and
- Any process change or pollution prevention alternative that could be broadly applied that was not identified and considered during MACT development.

In addition to looking back at practices, processes or control technologies reviewed at the time we developed the MACT standards, we reviewed a variety of sources of data to aid in our evaluation of whether there were additional practices, processes or controls to consider. One of these sources of data was subsequent air toxics rules. Since the promulgation of the MACT standards for the source categories addressed in this proposal, the EPA has developed air toxics regulations for a number of additional source categories. In these subsequent air toxic regulatory actions, we consistently evaluated any new practices, processes and control technologies. We reviewed the regulatory requirements and/or technical analyses associated with these subsequent regulatory actions to identify any practices, processes and control technologies considered in these efforts that could possibly be applied to emission sources in the source categories under this current RTR review.

We also consulted the EPA's RBLC. The terms ''RACT,'' ''BACT'' and ''LAER'' are acronyms for different program requirements under the CAA provisions addressing the national ambient air quality standards. Control technologies classified as RACT, BACT or LAER apply to stationary sources depending on whether the sources are existing or new and 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 data base 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 any practices, processes or control technologies are included for the types of processes used for emission sources (*e.g.,* tanks or vents) in the source categories under consideration in this proposal.

We also reviewed other information sources, such as state or local permitting agency databases and industry-supported databases.

E. What other issues are we addressing in this proposal?

In addition to the RTR performed regarding the NESHAP, we are also proposing revisions to the NESHAP to address emissions during periods of startup, shutdown and malfunction (SSM) and revisions to require electronic reporting of emissions test results.

1. Startup, Shutdown and Malfunction (SSM)

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 (DC 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), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

As we have done in other recent risk and technology review rulemakings, we are proposing the elimination of the SSM exemption in each of the three MACT standards addressed by this rule. See, *e.g.,* 76 FR 22568, 22573 (Apr. 21, 2011). Consistent with *Sierra Club* v. *EPA,* the EPA is proposing standards in these rules that apply at all times. We are also proposing several revisions to the General Provisions Applicability table in each of the MACT standards. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate or revise certain recordkeeping and reporting related to the SSM exemption. The EPA has attempted to ensure that we have not included in the proposed regulatory language any provisions that are inappropriate, unnecessary or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked.

In proposing the standards in these rules, the EPA has taken into account startup and shutdown periods and has not proposed different standards for those periods because we expect the difference in emission levels during periods of startup and shutdown are insignificant and that facilities in these source categories should be able to comply with the standards during these times.

Periods of startup, normal operation and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *.'' (40 CFR 63.2). The EPA has determined that CAA section 112 does not require that emissions that occur during periods of malfunction be factored into development of CAA section 112 standards. Under 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 section 112 that directs the agency to consider malfunctions in determining the level ''achieved'' by the best performing or best controlled sources when setting emission standards. Moreover, while the EPA accounts for variability in setting emissions standards consistent with the CAA section 112 caselaw, nothing in that caselaw requires the agency to consider malfunctions as part of that analysis. Section 112 uses the concept of ''best controlled'' and ''best performing'' unit in defining the level of stringency that CAA section 112 performance standards must meet. Applying the concept of ''best controlled'' or ''best performing'' to a unit that is malfunctioning presents significant difficulties, as malfunctions are sudden and unexpected events.

Further, accounting for malfunctions 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. As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See, *e.g., Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (DC 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 (DC 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, the goal of a best controlled or best performing source is to operate in such a way as to avoid malfunctions of the source, and accounting for malfunctions could lead to standards that are significantly less stringent than levels that are achieved by a well-performing non-malfunctioning source. The EPA's approach to malfunctions is consistent with 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(d) 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(d) 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).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emission standard. (See, *e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983)). The EPA is, therefore, proposing to follow its recently established practice (see, *e.g.,* 76 FR 22566, 22573–74 (Apr. 21, 2011)) and add to the rules an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See proposed 40 CFR 63.1312 (Group IV Polymers and Resins), 40 CFR 63.1361 (PAI) and 40 CFR 63.1423 (PEPO). The regulations define ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. We also are proposing other regulatory provisions to specify the

elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in proposed 40 CFR 63.1310(k) (Group IV Polymers and Resins), 40 CFR 63.1360(k) (PAI) and 40 CFR 63.1420(i) (PEPO). (See 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with proposed 40 CFR 63.1310(j)(4) (Group IV Polymers and Resins), 40 CFR 63.1362(i) (PAI) and 40 CFR 63.1420(h)(4) (PEPO) and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR 22.27).

The EPA included an affirmative defense in these proposed rules in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). See generally, *Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008). Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. While ''continuous'' limitations, on the one hand, are required, there is also caselaw indicating that in many situations it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973), the District of Columbia Circuit acknowledged that, in setting standards under CAA section 111, ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973). Though intervening caselaw such as *Sierra Club* v. *EPA* and the CAA 1977 amendments undermine the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an affirmative defense, EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). See, *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. section 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

In addition to these changes in the provisions related to SSM, we are also proposing that there be no discharge to the atmosphere from any pressure relief device (PRD) on any equipment in HAP service within the process units for these seven source categories. To ensure compliance with this requirement, facility owners or operators would be required to install electronic indicators on each PRD that would be able to identify and record the time and duration of each pressure release and notify operators that a pressure release has occurred. While pressure release events may be associated with unplanned, nonroutine discharges that result from operator error, malfunctions or other unexpected causes that require immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage, we are concerned that a large number of these releases that occur may emit large quantities of HAP, may not be identified and controlled in a timely manner and may be due to repeat problems that have not been corrected. These proposed provisions will clarify that such release events would be violations of the emissions standards of these rules. If any pressure release events that occur are related to a process or control device malfunction, the owner or operator could claim the affirmative defense described above.

2. Electronic Reporting

We are proposing to add electronic reporting requirements to the PAI, PEPO and the Group IV Polymers and Resin Production NESHAP. The EPA must have performance test data to conduct effective reviews of CAA section 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 because of varied locations for data storage and varied data storage methods. In recent years, though, 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.

Through this proposal, the EPA is presenting a step to increase the ease and efficiency of data submittal and improve data accessibility. Specifically, the EPA is proposing that owners and operators of PAI, PEPO and Group IV Polymers and Resins facilities submit electronic copies of required performance test reports to the EPA's WebFIRE database. The WebFIRE database was constructed to store performance test data for use in developing emission factors. A description of the WebFIRE database is

available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.*

As proposed above, data entry would be through an electronic emissions test report structure called the Electronic Reporting Tool (ERT). The ERT would generate electronic report which would be submitted using the Compliance and Emissions Data Reporting Interface (CEDRI). The submitted report would be transmitted through the EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database making submittal of data very straightforward and easy. A description 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 (*http://www.epa.gov/cdx*).

The proposal to submit performance test data electronically to the EPA would apply only to those performance tests conducted using test methods that will be supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference 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. Having these data, the EPA would be able to develop improved emission factors, make fewer information requests and promulgate better regulations.

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. Another advantage is that the ERT clearly states what testing information would be required. Another important proposed benefit of submitting these data to the EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. When the EPA has performance test data in hand, there will likely be fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews. This would result in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and the EPA (in terms of preparing and distributing data collection requests and assessing the results).

State, local and tribal agencies could also benefit from more streamlined and accurate review of electronic data submitted to them. The ERT would allow for an electronic review process rather than a manual data assessment making review and evaluation of the source provided data and calculations easier and more efficient. Finally, another benefit of the proposed data submittal to WebFIRE electronically is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data for establishing emissions factors and by ensuring that the factors are more representative of current industry operational procedures. 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. 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 inventories and, as a result, air quality regulations.

IV. Analytical Results and Proposed Decisions for Group IV Polymers and Resins Source Categories

A. Acrylonitrile Butadiene Styrene Resin (ABS)

1. What are the results of the risk assessments?

a. Inhalation Risk Assessment Results

Table 3 provides an overall summary of the inhalation risk assessment results for the source category.

TABLE 3—ABS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]		Maximum off-site acute noncancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
5	30	30	32,000	0.003	0.2	0.2	HQ_{REL} = 2 acetaldehyde. HQ_{ERPG-1} = 0.04 acetaldehyde.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the ABS source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available dose-response value. See section III.B.3 of this preamble for explanation of acute dose-response values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table 3, the results of the inhalation risk assessment indicated the maximum lifetime individual cancer risk could be up to 30-in-1 million, the maximum chronic noncancer TOSHI value could be up to 0.2, and the maximum off-facility site acute HQ value could be up to 2, based on the actual emissions level and the REL value for acetaldehyde. The total estimated national cancer incidence from these facilities, based on actual emission levels, is 0.003 excess cancer cases per year or one case in every 333 years.

Based on our analysis, we believe that actual emissions approximate emissions allowable under the MACT standards. Therefore, the risk results for MACT-allowable emissions are approximately equal to those for actual emissions. For

more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts as a result of PB–HAP.

b. Facility-Wide Risk Assessment Results

Table 4 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels. For detailed facility-specific results, see Appendix 4 of the *Draft Residual Risk Assessment for 7 Source Categories* in the docket for this rulemaking.

TABLE 4—ABS FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	5
Cancer Risk:*	
Estimated maximum facility-wide individual cancer risk (in 1 million)	30
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the ABS source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities at which the ABS source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	4
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	< 1
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	0
Number of facilities at which the ABS source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the Group IV Polymers and Resins MACT standards for ABS resins is estimated to be 30-in-1 million, based on actual emissions. Of the 5 facilities included in this analysis, none have a facility-wide MIR of 100-in-1 million. There are 4 facilities with facility-wide MIR of 1-in-1 million or greater (MIR ranging from 10 to 30 in a million). Each of these facilities has ABS production operations that contribute greater than 50 percent to the facility-wide risks.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be less than 1, based on actual emissions. Of the 5 facilities included in this analysis, none have facility-wide maximum chronic noncancer TOSHI values greater than 1.

c. What is our proposed decision regarding risk acceptability?

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the ABS source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be up to 30-in-1 million due to both actual and allowable emissions. This value is considerably less than 100-in-1 million, which is the presumptive level of acceptability. The risk analysis also shows low cancer incidence (1 in every 333 years), no potential for human health multipathway effects, and that chronic noncancer health impacts are unlikely.

We estimate that the worst-case acute HQ value could exceed a value of 1 for one HAP, acetaldehyde, with a potential maximum HQ up to 2 based on the acute REL dose-response value. Only one of the five facilities in this source category had an estimated HQ greater than 1 (REL of 2 for acetaldehyde). All other facilities modeled had an HQ less than 1. The maximum HQ based on an AEGL–1 or ERPG–1 dose-response value is 0.04 for acetaldehyde based on the ERPG–1. As described earlier in this preamble, the acute assessment includes some conservative assumptions and some uncertainties. Moreover, the REL are protective and designed to protect the most sensitive individuals in the population by inclusion of margins of safety and exposures above the REL do not necessarily indicate that adverse effects will occur. Considering the improbable assumption that worst-case meteorological conditions are present at the same time that maximum hourly emissions of acetaldehyde exceed the average hourly emission rate by a factor of 10 at all emission points simultaneously, coincident with individuals being in the location of maximum impact, and considering the low acute HQ values based on the AEGL–1 and ERPG–1 dose-response values collectively with the REL value, we believe it is unlikely that HAP emissions from this source category would result in acute health effects.

Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 30-in-1 million and that the maximum chronic exposures are expected to be without appreciable risk of adverse noncancer health effects.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the risks from the ABS source category are acceptable.

d. What is our proposed decision regarding ample margin of safety?

We considered whether the MACT standards provide an ample margin of safety to protect public health. In this analysis, we investigated available emissions control options that might reduce the risk associated with emissions from the source category and considered this information along with all of the health risks and other health information considered in the risk acceptability determination.

For the ABS source category, we identified only one control option to further address risks from equipment leaks. This control option would require sources to install leakless valves to prevent leaks from those components.

While approximately 15 percent of the emissions from this source category are due to equipment leaks, these emissions do not contribute to the maximum individual cancer risks estimated for the source category.

We estimated HAP reduction resulting from this control option is approximately 6 tpy from the baseline actual emissions level. We estimated that achieving these reductions would involve a capital cost of approximately $11,000,000, a total annualized cost of about $1,500,000 and a cost effectiveness of $244,000 per ton of HAP emissions reduced. The additional control requirement would not achieve a reduction in the maximum individual cancer risks. We estimate that the MACT allowable emissions from this source category are approximately equal to the reported, actual emissions. Therefore, the estimated emission reduction, risk reduction and costs discussed above would also be applicable to the MACT allowable emissions level. We believe that the costs of this option are not reasonable, given the level of emission and risk reduction.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in making our ample margin of safety determination. Considering the health risk information and the unreasonable cost effectiveness of the option identified, we propose that the existing MACT standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

2. What are the results of the technology review?

In the decade since the Group IV Polymers and Resins MACT standards were promulgated, the EPA has developed 19 air toxics regulations for source categories that emit organic HAP from the same type of emissions sources that are present in the five Group IV Polymers and Resins source categories addressed in this proposed action. We reviewed the regulatory requirements and/or technical analyses for these 19 regulations for new practices, processes and control technologies. We also conducted a search of the RBLC for controls for VOC–SOCMI categories with permits dating back to 1997.

We identified no advancements in practices, processes, and control technologies applicable to the emission sources in the Group IV Polymers and Resins source categories in our technology review.

3. What other actions are we proposing?

a. SSM Provisions

We are proposing to eliminate the SSM exemption in the Group IV Polymers and Resins MACT standards. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing that standards in this rule would apply at all times. We are proposing several revisions to 40 CFR part 63, subpart JJJ. Specifically, we are proposing to revise Table 1 to indicate that the requirements of 40 CFR 63.6(e) of the General Provisions do not apply. The 40 CFR 63.6(e) requires the owner or operator to act according to the general duty to ''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.'' We are separately proposing to incorporate this general duty to minimize into 40 CFR 63.1310(j)(4). The 40 CFR 63.6(e) also requires the owner or operator of an affected source to develop a written SSM plan. We are proposing to remove the SSM plan requirement. We are proposing to remove the explanation of applicability of emissions standards during periods SSM in 40 CFR 63.1310(j); remove the malfunction plan from 40 CFR 63.1335(b); clarify that representative conditions do not include periods of SSM throughout the rule; remove references to periods of SSM in monitoring; remove the provisions for excused excursions from 40 CFR 63.1334(g); and revise the SSM-associated recordkeeping and reporting requirements in 40 CFR 63.1335(b) to require reporting and recordkeeping for periods of malfunction. We are also proposing to revise Table 1 to indicate that SSM-related provisions in 40 CFR 63.6(e)(1), 63.6(e)(3), 63.6(f)(1); 40 CFR 63.7(e)(1); 40 CFR 63.8(c)(1); and 40 CFR 63.10(d)(5) of the General Provisions do not apply. We are also proposing to add requirements in 40 CFR 63.1331(a)(9)) to clarify that PRD releases to the atmosphere are violations of the emissions standards and to require pressure release alarms and to add requirements in 40 CFR 63.1335(e)(9) to require reporting of any pressure device releases to the atmosphere with the periodic report. In addition, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

b. Electronic Reporting

To increase the ease and efficiency of data submittal and improve data accessibility, we are proposing to require the submission of electronic copies of required performance tests for test methods that are supported by the ERT to EPA's WebFIRE database. These provisions are added in 40 CFR 63.1335(e)(10).

B. Styrene Acrylonitrile Resin (SAN)

1. What are the results of the risk assessments?

a. Inhalation Risk Assessment Results

Table 5 provides an overall summary of the inhalation risk assessment results for the source category.

TABLE 5—SAN INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]		Maximum off-site acute noncancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
2	0.03	0.03	0	0.000006	0.0002	0.0002	HQ_{REL} = 0.007 methylene chloride.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the SAN source category is the respiratory system.

[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.B.3 of this preamble for explanation of acute dose-response values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table 5, the results of the inhalation risk assessment indicated the maximum lifetime individual cancer risk could be up to 0.03-in-1 million, the maximum chronic noncancer TOSHI value could be up to 0.0002, and the maximum off-facility site acute HQ value could be up to 0.007, based on the actual emissions level and the REL value for methylene chloride. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.000006 excess cancer cases per year or one case in every 166,666 years.

Based on our analysis, we believe that actual emissions approximate emissions allowable under the MACT standards. Therefore, the risk results for MACT-allowable emissions are approximately equal to those for actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts as a result of PB–HAP.

b. Facility-Wide Risk Assessment Results

Table 6 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels. For detailed facility-specific results, see Appendix 4 of the *Draft Residual Risk Assessment for 7 Source Categories* in the docket for this rulemaking.

TABLE 6—SAN FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	2
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	20
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the SAN source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities at which the SAN source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	0
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	2
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	1
Number of facilities at which the SAN source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the Group IV Polymers and Resins MACT standards for SAN resins is estimated to be 20-in-1 million, based on actual emissions. Of the 2 facilities included in this analysis, none have a facility-wide MIR of 100-in-1 million. There are 2 facilities with facility-wide MIR of 1-in-1 million or greater (MIR of 20 and 10 in a million). Neither of these facilities have SAN production operations that contribute greater than 50 percent to the facility-wide risks.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be 2, based on actual emissions. Of the 2 facilities included in this analysis, only one facility has a facility-wide maximum chronic noncancer TOSHI value greater than 1 (TOSHI of 2).

c. What is our proposed decision regarding risk acceptability?

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the SAN source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be up to 0.03-in-1 million due to both actual and allowable emissions. This value is less than 1-in-1 million. The risk analysis also shows low cancer incidence (1 in every 166,666 years), no potential for human health multipathway effects and that chronic noncancer and acute health effects are unlikely.

Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 20-in-1 million. The maximum chronic noncancer TOSHI is estimated to be 2, but the source category contributes less than 1 percent to the maximum facility-wide TOSHI.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the risks from the SAN source category are acceptable.

d. What is our proposed decision regarding ample margin of safety?

The SAN source category emits HAP which are known, probable or possible carcinogens. The EPA evaluated the emissions of these HAP and determined that the cancer risks to the individual most exposed are less than 1-in-1 million. Our analysis demonstrated that chronic noncancer risks are expected to be low, based on actual and MACT allowable emissions. We determined that emissions from the SAN source category would result in a chronic noncancer TOSHI less than 1 and an acute HQ less than 1 for the individual most exposed. The EPA undertook further analysis to assess whether environmental effects might result from

emissions from this source category. We assume that human toxicity values for the inhalation pathway are generally protective of terrestrial mammals and plants, and thus, we do not anticipate that actual or MACT allowable emissions would result in acute or chronic noncancer health effects to these mammals. While we believe this to be generally true, we acknowledge that there is some associated uncertainty with this assumption. In addition, this source category had no reported emissions of PB–HAP and, therefore, no potential for an adverse environment effect via multipathway exposures was identified as a result of PB–HAP.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the existing MACT standards for the SAN source category provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

2. What are the results of the technology review?

The results of the technology review for the Group IV Polymers and Resins MACT standards are discussed above in section IV.A.2. We identified no advancements in practices, processes, and control technologies applicable to the emission sources in the Group IV Polymers and Resins source categories in our technology review.

3. What other actions are we proposing?

a. SSM Provisions

The proposed changes to the SSM provisions for the Group IV Polymers and Resins MACT standards, which apply to the SAN source category, are discussed above in section IV.A.3.a.

b. Electronic Reporting

The proposed addition of electronic reporting requirements for performance tests for the Group IV Polymers and Resins MACT standards, which apply to the SAN source category, is discussed above in section IV.A.3.b.

C. Methyl Methacrylate Butadiene Styrene Resin (MBS)

1. What are the results of the risk assessments?

a. Inhalation Risk Assessment Results

Table 7 provides an overall summary of the inhalation risk assessment results for the source category.

TABLE 7—MBS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]		Maximum off-site acute noncancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
2	0.4	0.4	0	0.00003	0.007	0.007	HQ_{ERPG-1} = 9 ethyl acrylate. HQ_{AEGL-1} = 0.01 ethyl acrylate.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the MBS source category is the reproductive system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute threshold. For this source category, the maximum acute values were based on the ERPG–1 HQ for ethyl acrylate, and no REL value was available for this HAP. See section III.B.3 of this preamble for explanation of acute dose-response values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table 7, the results of the inhalation risk assessment indicated the maximum lifetime individual cancer risk could be up to 0.4-in-1 million, the maximum chronic noncancer TOSHI value could up to 0.007 and the maximum off-facility site acute HQ value could be up to 9, based on the actual emissions level and the ERPG–1 value for ethyl acrylate. The total estimated national cancer incidence from these facilities, based on actual emission levels is 0.00003 excess cancer cases per year or one case in every 33,333 years.

Based on our analysis, we believe that actual emissions approximate emissions allowable under the MACT standards. Therefore, the risk results for MACT-allowable emissions are approximately equal to those for actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts as a result of PB–HAP.

b. Facility-Wide Risk Assessment Results

Table 8 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels. For detailed facility-specific results, see Appendix 4 of the *Draft Residual Risk Assessment for 7 Source Categories* in the docket for this rulemaking.

TABLE 8—MBS FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	2
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	2
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the MBS source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0

TABLE 8—MBS FACILITY-WIDE RISK ASSESSMENT RESULTS—Continued

Number of facilities at which the MBS source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	0
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	< 1
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	0
Number of facilities at which the MBS source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the Group IV Polymers and Resins MACT standards for MBS resins is estimated to be 2-in-1 million, based on actual emissions. Of the 2 facilities included in this analysis, none have a facility-wide MIR of 100-in-1 million. There is 1 facility with a facility-wide MIR of 1-in-1 million or greater (MIR of 2 in a million). The facility with an MIR greater than 1-in-1 million does not have MBS production operations that contribute greater than 50 percent to the facility-wide risks.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be less than 1, based on actual emissions. Of the 2 facilities included in this analysis, neither have facility-wide maximum chronic noncancer TOSHI values greater than 1.

c. What is our proposed decision regarding risk acceptability?

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the MBS source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be up to 0.4-in-1 million due to both actual and allowable emissions. This value is less than 1-in-1 million. The risk analysis also shows low cancer incidence (1 in every 33,333 years), no potential for human health multipathway effects and that chronic noncancer health impacts are unlikely.

We estimate that the worst-case acute HQ value could exceed a value of 1 for one HAP, ethyl acrylate, with a potential maximum HQ up to 9 based on the acute ERPG–1 dose-response value. One of the two facilities in this source category had an estimated HQ greater than 1 (ERPG–1 of 9 for ethyl acrylate). All other facilities modeled had an HQ less than 1. The maximum HQ based on an AEGL–1 dose-response value is 0.01 for ethyl acrylate. For ethyl acrylate, the ERPG–1 value is indicative of the odor recognition threshold, while the AEGL–1 value is indicative of a level which could result in eye irritation. This suggests that, at this worst-case exposure level, a person might smell the pollutant, but not experience any eye irritation. As described earlier in this preamble, the acute assessment includes some conservative assumptions and some uncertainties. Considering the improbable assumption that worst-case meteorological conditions are present at the same time that maximum hourly emissions of ethyl acrylate exceed the average hourly emission rate by a factor of 10 at all emission points simultaneously, coincident with individuals being in the location of maximum impact and considering the low acute HQ value based on the AEGL–1 dose-response value collectively with the ERPG–1 value, we believe it is unlikely that HAP emissions from this source category would result in acute health effects.

Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 2-in-1 million and that the maximum chronic exposures are expected to be without appreciable risk of adverse noncancer health effects.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the risks from the MBS source category are acceptable.

d. What is our proposed decision regarding ample margin of safety?

The MBS source category emits HAP which are known, probable or possible carcinogens. The EPA evaluated the emissions of these HAP and determined that the cancer risks to the individual most exposed are less than 1-in-1 million. Our analysis demonstrated that chronic noncancer risks are expected to be low, based on actual and MACT allowable emissions. We determined that emissions from the MBS source category would result in a chronic noncancer TOSHI less than 1 for the individual most exposed. While the assessment for acute impacts suggests that short-term ethyl acrylate concentrations at one facility could exceed the ERPG–1 dose-response value, we believe it unlikely that acute impacts would occur due to the conservative assumptions and uncertainties associated with the acute analysis. These assumptions include having worst-case meteorological conditions present at the same time that maximum hourly emissions of ethyl acrylate exceed the average hourly emission rate by a factor of 10, coincident with individuals being in the location of maximum impact. The EPA undertook further analysis to assess whether environmental effects might result from emissions from this source category. We assume that human toxicity values for the inhalation pathway are generally protective of terrestrial mammals and plants and, thus, we do not anticipate that actual or MACT allowable emissions would result in acute or chronic noncancer health effects to these mammals. While we believe this to be generally true, we acknowledge that there is some associated uncertainty with this assumption. In addition, this source category had no reported emissions of PB–HAP and, therefore, no potential for an adverse environmental effect via multipathway exposures was identified.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the existing MACT standards for the MBS source category provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

2. What are the results of the technology review?

The results of the technology review for the Group IV Polymers and Resins MACT standards are discussed above in section IV.A.2. We identified no advancements in practices, processes

and control technologies applicable to the emission sources in the Group IV Polymers and Resins source categories in our technology review.

3. What other actions are we proposing?

a. SSM Provisions

The proposed changes to the SSM provisions for the Group IV Polymers and Resins MACT standards, which apply to the MBS source category, are discussed above in section IV.A.3.a.

b. Electronic Reporting

The proposed addition of electronic reporting requirements for performance tests for the Group IV Polymers and Resins MACT standards, which apply to the MBS source category, are discussed above in section IV.A.3.b.

D. Polystyrene Resin

1. What are the results of the risk assessments?

a. Inhalation Risk Assessment Results

Table 9 provides an overall summary of the inhalation risk assessment results for the source category.

TABLE 9—POLYSTYRENE RESINS INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]		Maximum off-site acute noncancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
11	2	2	180	0.00003	0.004	0.004	HQ_{REL} = 0.3 styrene.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the polystyrene resin source category is the nervous system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.B.3 of this preamble for explanation of acute dose-response values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table 9, the results of the inhalation risk assessment indicated the maximum lifetime individual cancer risk could be up to 2-in-1 million, the maximum chronic noncancer TOSHI value could be up to 0.004, and the maximum off-facility site acute HQ value could be up to 0.3, based on the actual emissions level and the REL value for styrene. The total estimated national cancer incidence from these facilities, based on actual emission levels, is 0.00003 excess cancer cases per year, or one case in every 33,333 years.

Based on our analysis, we believe that actual emissions approximate emissions allowable under the MACT standards. Therefore, the risk results for MACT-allowable emissions are approximately equal to those for actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

There were no reported emissions of PB–HAP; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts as a result of PB–HAP.

b. Facility-Wide Risk Assessment Results

Table 10 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels. For detailed facility-specific results, see Appendix 4 of the *Draft Residual Risk Assessment for 7 Source Categories* in the docket for this rulemaking.

TABLE 10—POLYSTYRENE RESINS FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	11
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	10
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the polystyrene resin source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities at which the polystyrene resin source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	1
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	<1
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	0
Number of facilities at which the Polystyrene Resin source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the Group IV Polymers and Resins MACT standards for polystyrene resins is estimated to be 10-in-1 million, based on actual emissions. Of the 11 facilities included in this analysis, none have a facility-wide MIR of 100-in-1 million. There are 2 facilities with facility-wide MIR of 1-in-1 million or greater (MIR of 10 and 2 in a million). One of these facilities has polystyrene resin production operations that contribute greater than 50 percent to the facility-wide risks.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be less than 1, based on

actual emissions. Of the 11 facilities included in this analysis, none have facility-wide maximum chronic noncancer TOSHI values greater than 1.

c. What is our proposed decision regarding risk acceptability?

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the Polystyrene Resin source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be up to 2-in-1 million due to both actual and allowable emissions. This value is considerably less than 100-in-1 million, which is the presumptive level of acceptability. The risk analysis also shows low cancer incidence (1 in every 33,333 years), no potential for human health multipathway effects and that acute and chronic noncancer health impacts are unlikely.

Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 10-in-1 million and that the maximum chronic exposures are expected to be without appreciable risk of adverse noncancer health effects.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the risks from the Polystyrene Resin source category are acceptable.

d. What is our proposed decision regarding ample margin of safety?

We considered whether the MACT standards provide an ample margin of safety to protect public health. In this analysis, we investigated available emissions control options that might reduce the risk associated with emissions from the source category and considered this information along with all of the health risks and other health information considered in the risk acceptability determination.

For the Polystyrene Resin source category, we identified only one control option to further address risks from equipment leaks, which were shown to contribute 100 percent to the maximum individual cancer risks for this source category. This control option would require sources to install leakless valves to prevent leaks from those components.

We estimated HAP reduction resulting from this control option is approximately 5 tpy from the baseline actual emissions level. We estimated that achieving these reductions would involve a capital cost of approximately $9,000,000, a total annualized cost of about $1,300,000 and a cost effectiveness of $244,000 per ton of HAP emissions reduced. The additional control requirement would achieve approximately 20-percent reduction in baseline risks at a very high cost. We estimate that the MACT allowable emissions from this source category are approximately equal to the reported, actual emissions. Therefore, the estimated emission reduction, risk reduction and costs discussed above would also be applicable to the MACT allowable emissions level. We believe that the costs of this option are not reasonable, given the level of emission and risk reduction.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in making our ample margin of safety determination. Considering the health risk information and the unreasonable cost effectiveness of the option identified, we propose that the existing MACT standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

2. What are the results of the technology review?

The results of the technology review for the Group IV Polymers and Resins MACT standards are discussed above in section IV.A.2. We identified no advancements in practices, processes and control technologies applicable to the emission sources in the Group IV Polymers and Resins source categories in our technology review.

3. What other actions are we proposing?

a. SSM Provisions

The proposed changes to the SSM provisions for the Group IV Polymers and Resins MACT standards, which apply to the polystyrene resin source category, are discussed above in section IV.A.3.a.

b. Electronic Reporting

The proposed addition of electronic reporting requirements for performance tests for the Group IV Polymers and Resins MACT standards, which apply to the polystyrene resin source category, are discussed above in section IV.A.3.b.

E. Poly (Ethylene Terephthalate) Resin (PET)

1. What are the results of our analyses and proposed decisions regarding unregulated HAP and/or emissions sources?

a. Equipment Leaks

We identified the absence of a limit for a potentially significant emissions source within the provisions of the Group IV Polymers and Resins MACT standards that apply to the PET continuous TPA high viscosity multiple end finisher subcategory. Specifically, there are no regulations for equipment leaks for this source subcategory.[22] As these processes are potentially major sources of emissions for the one facility in the source category, we are proposing to set a work practice standard for equipment leaks under CAA section 112(d)(2) and (d)(3) in this action. 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) defines the phrase ''not feasible to prescribe or enforce an emission standard'' as follows:

> [A]ny situation in which the Administrator determines that (A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

The work practice standards in this proposed rule are consistent with CAA section 112(h)(2)(B), because applying a measurement methodology to this class of sources is not technologically and economically feasible due to the number of openings and possible emissions points and because the fugitive emissions cannot be routed to a conveyance designed to capture such emissions.

As there is only one facility in the source subcategory, the emissions level currently being achieved by this facility represents the MACT floor. However, emissions from equipment leaks are

[22] Note that these uncontrolled emissions were included in the risk assessment for the PET source category.

intermittent and fugitive in nature and, therefore, it is not feasible to fully measure the mass emission rate from numerous potential leaks at this facility or to route such emissions through a conveyance designed and constructed to emit or capture such fugitive pollutants. For this reason, under CAA section 112(h), we are proposing to establish the MACT floor for this source subcategory, based on the work practices this facility currently performs to limit emissions from equipment leaks. The work practices this facility follows are to perform a 2- to 3-hour leak check upon startup following an outage where changes have been made to the facility's esterification equipment, which is the only area of the facility that has equipment in gas/vapor service. This is conducted by introducing hot ethylene g1yco1 vapors into the system. Any leaks identified are repaired by tightening flange bolts before introducing new materials into the process. The other equipment components at the facility are in vacuum or heavy liquid service, which are not monitored due to the low vapor pressure of predominant HAP, ethylene glycol and the low potential for equipment leak emissions from these components.

As part of our beyond-the-floor analysis, we considered alternatives more stringent than the MACT floor option. We identified the HON LDAR program as one such option, which is the required level of control for other facilities subject to the Group IV Polymers and Resins MACT standards. The HON requires the use of sensory monitoring for pumps, valves, agitators and connectors in heavy liquid service; the use of EPA Method 21 of 40 CFR part 60, Appendix A, for instrument monitoring of equipment in gas/vapor service; and equipment in vacuum service is not required to be monitored. Based on previous information prepared to examine the equipment leak costs for facilities in the PET source category,[23] the capital costs of this option are estimated to be approximately $13,000 and the total annual costs are estimated to be approximately $13,000. The estimated HAP decrease is 1.27 tpy, with a cost effectiveness of approximately $11,000/ton. Table 11 summarizes the cost and emission reduction impacts of the proposed options. Because the HAP reduced would be ethylene glycol, which does not contribute to the cancer risk estimate for the PET source category, the MIR for the source category would remain at 9. Any impact on the magnitude of the HI resulting from ethylene glycol emission reductions due to this control option would be negligible as ethylene glycol contributes minimally to the chronic noncancer TOSHI of 0.5. These risk values are discussed further in section IV.E.2 below.

TABLE 11—PET CONTINUOUS TPA HIGH VISCOSITY EQUIPMENT LEAKS OPTIONS IMPACTS

Regulatory alternatives	HAP emissions (tpy)	Capital cost ($)	Annual cost ($)	Cost effectiveness ($/ton HAP removed)
Baseline	1.43	——	——	——
1 (MACT floor)	1.43	0	0	——
2 (Beyond-the-floor)	0.16	13,000	13,000	11,000

We believe that the costs of this beyond-the-floor option are not reasonable, given the level of emission reduction. Therefore, we are proposing an emission standard that reflects the MACT floor option, which is a work practice standard.

We are requesting comment on this analysis and these options.

b. Changes to PCCT Provisions in Response to a Petition for Reconsideration

We identified a potentially significant emissions source that is currently effectively unregulated within the provisions of the Group IV Polymers and Resins MACT standards that apply to the sources producing PET using the continuous TPA high viscosity multiple end finisher process. Specifically, sources have not been required to comply with the previously promulgated provisions addressing emissions from PCCT within this source subcategory. We originally promulgated standards for PCCT in this subcategory in the September 12, 1996, **Federal Register** publication of NESHAP for Group IV Polymer and Resin source categories. On August 29, 2000, the EPA took action to indefinitely stay the compliance date for the PCCT provisions for this subcategory because the EPA was in the process of responding to a request to reconsider portions of the Group IV Polymers and Resins MACT standards that could result in changes to the emission limitation for PCCT in this subcategory (65 FR 52319–23). As PCCT are potentially major sources of emissions for the one facility in the PET continuous TPA high viscosity multiple end finisher subcategory, we have reconsidered the emissions and cost data available and we are proposing MACT standards for PCCT under CAA section 112(d)(2) and (d)(3) in this action.

As there is only one facility in the source subcategory, the emissions level currently being achieved by this facility represents the MACT floor. The facility is currently regulated by the Polymers Manufacturing New Source Performance Standards, which requires the facility to maintain an ethylene glycol concentration in the PCCT at or below 6.0 percent by weight, averaged on a daily basis over a rolling 14-day period of operating days. We are proposing to establish the MACT floor for this source subcategory, based on the 6.0 percent by weight ethylene glycol concentration limit this facility is required to achieve.

As part of our beyond-the-floor analysis, we considered alternatives more stringent than the MACT floor option. The original PCCT regulations promulgated in the Group IV Polymer and Resin NESHAP established an ethylene glycol concentration limit of 4.0 percent by weight for PCCT in this source subcategory, based on the information available on controls and costs, but the source has never been required to achieve this limit, in light of our August 29, 2000, indefinite stay of the compliance date. We identified this 4.0-percent concentration limit as a beyond-the-floor option for our revised analysis. To achieve the beyond-the-floor option, the facility would need to modify its existing ethylene glycol

[23] Memorandum to Group IV Resins Docket, A–92–45, from Ken Meardon, Pacific Environmental Services, Inc. *Re-Evaluation of Equipment Leak Emissions and Costs at PET Facilities.*

recovery system and increase the amount of steam used to strip ethylene glycol from the contaminated water. Based on information received from the only facility in the subcategory after promulgation of the Group IV Polymers and Resins MACT standards, the capital costs of this option are estimated to be approximately $8.7 million and the total annual costs are estimated to be approximately $4.2 million. The estimated HAP decrease is 49.0 tpy, with a cost effectiveness of approximately $86,000/ton. Table 12 summarizes the cost and emission reduction impacts of the proposed options. Because the HAP reduced would be ethylene glycol, which does not contribute to the cancer risk estimate for the PET source category, the MIR for the source category would remain at 9. Any impact on the magnitude of the HI resulting from ethylene glycol emission reductions due to this control option would be negligible as ethylene glycol contributes minimally to the chronic noncancer TOSHI of 0.5. These risk values are discussed further in section IV.E.2 below. Further information regarding this analysis can be found in the memorandum, *Impacts Assessment for Process Contact Cooling Towers for the PET Continuous TPA High Viscosity Multiple End Finisher Subcategory,* available in the docket for this action.

TABLE 12—PET CONTINUOUS TPA HIGH VISCOSITY MULTIPLE END FINISHER SUBCATEGORY PROCESS CONTACT COOLING TOWERS OPTIONS IMPACTS

Regulatory alternatives	HAP emissions (tpy)	Capital cost ($)	Annual cost ($)	Cost effectiveness ($/ton HAP removed)
Baseline	147.0	——	——	——
1 (MACT floor)	147.0	0	0	——
2 (Beyond-the-floor)	98.0	8,800,000	4,200,000	86,000

We believe that the costs of this beyond-the-floor option are not reasonable, given the level of emission reduction. Therefore, we are proposing to re-set the previously stayed MACT standard as an emission standard that reflects the MACT floor option, which is the ethylene glycol concentration limit of 6.0 weight percent.

We are requesting comment on this analysis and these options.

2. What are the results of the risk assessments?

a. Inhalation Risk Assessment Results

Table 13 provides an overall summary of the inhalation risk assessment results for the source category.

TABLE 13—PET INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]		Maximum off-site acute noncancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
15	9	9	4,200	0.002	0.5	0.5	HQ_{REL} = 8 acetaldehyde. HQ_{ERPG-1} = 1 acetaldehyde. HQ_{AEGL-1} = 0.2 acetaldehyde.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the PET source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.B.3 of this preamble for explanation of acute dose-response values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table 13, the results of the inhalation risk assessment indicated the maximum lifetime individual cancer risk could be up to 9-in-1 million, the maximum chronic noncancer TOSHI value could be up to 0.5, and the maximum off-facility site acute HQ value could be up to 8, based on the actual emissions level and the REL value for acetaldehyde. The total estimated national cancer incidence from these facilities based on actual emission levels is 0.002 excess cancer cases per year or one case in every 500 years.

Based on our analysis, we believe that actual emissions approximate emissions allowable under the MACT standards. Therefore, the risk results for MACT-allowable emissions are approximately equal to those for actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

One facility reported emissions of PB–HAP, including cadmium compounds, lead compounds and POM. Therefore, we compared the facility-specific

emission rates of each of these PB–HAP to the TRIM–Screen emission threshold values to assess the potential for significant human health risks or environmental risks via non-inhalation pathways. The emission rates were less than the emission threshold values; therefore, we do not expect potential for human health multipathway risks or adverse environmental impacts as a result of PB–HAP.

b. Facility-Wide Risk Assessment Results

Table 14 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels. For detailed facility-specific results, see Appendix 4 of the *Draft Residual Risk Assessment for 7 Source Categories* in the docket for this rulemaking.

TABLE 14—PET FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	15
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	9
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the PET source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities at which the PET source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	6
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	1
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	1
Number of facilities at which the PET source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the Group IV Polymers and Resins MACT standards for PET is estimated to be 9-in-1 million, based on actual emissions. Of the 15 facilities included in this analysis, none have a facility-wide MIR of 100-in-1 million. There are 8 facilities with facility-wide MIR of 1-in-1 million or greater (MIR ranging from 2 to 9 in a million). Six of these facilities have PET production operations that contribute greater than 50 percent to the facility-wide risks.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be 1, based on actual emissions. Of the 15 facilities included in this analysis, one has a facility-wide maximum chronic noncancer TOSHI value of 1.

c. What is our proposed decision regarding risk acceptability?

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the PET source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be up to 9-in-1 million due to both actual and allowable emissions. This value is considerably less than 100-in-1 million, which is the presumptive level of acceptability. The risk analysis also shows low cancer incidence (1 in every 500 years), no potential for human health multipathway effects and that chronic noncancer health impacts are unlikely.

We estimate that the worst-case acute HQ value could exceed a value of 1 for one HAP, acetaldehyde, with a potential maximum HQ up to 8 based on the acute REL dose-response value. Seven of the 15 facilities in this source category had an estimated acute HQ greater than 1 (REL for acetaldehyde ranging from 3 to 8). All other facilities modeled had an acute HQ less than 1. The maximum acute HQs based on ERPG–1 and AEGL–1 dose-response values for acetaldehyde are 1 and 0.2, respectively. As described earlier in this preamble, the acute assessment includes some conservative assumptions and some uncertainties. Considering the improbable assumption that worst-case meteorological conditions are present at the same time that maximum hourly emissions of acetaldehyde exceed the average hourly emission rate by a factor of 10 at all emission points simultaneously, coincident with individuals being in the location of maximum impact and considering the low acute HQ values, based on the ERPG–1 and AEGL–1 dose-response values collectively with the REL value, we believe it is unlikely that HAP emissions from this source category would result in acute health effects.

Our screening level evaluation of the potential health risks associated with emissions of PB–HAP did not indicate potential for adverse multipathway impacts due to emissions of the any of the PB–HAP associated with the source category.

Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 9-in-1 million. The maximum chronic noncancer TOSHI is estimated to be 1, but the source category contributes only 5 percent to the maximum facility-wide TOSHI.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the risks from the PET source category are acceptable.

d. What is our proposed decision regarding ample margin of safety?

We considered whether the MACT standards provide an ample margin of safety to protect public health. In this analysis, we investigated available emissions control options that might reduce the risk associated with emissions from the source category and considered this information along with all of the health risks and other health information considered in the risk acceptability determination.

For the PET source category, we identified only one control option to further address risks from equipment leaks, which were shown to contribute 100 percent to the maximum individual cancer risks for this source category. This control option would require sources to install leakless valves to prevent leaks from those components.

We estimated HAP reduction resulting from this control option is

approximately 123 tpy from the baseline actual emissions level. We estimated that achieving these reductions would involve a capital cost of approximately $220,000,000, a total annualized cost of about $30,000,000 and a cost effectiveness of $244,000 per ton of HAP emissions reduced. The additional control requirement would achieve approximately 20-percent reduction in baseline risks at a very high cost. We estimate that the MACT allowable emissions from this source category are approximately equal to the reported, actual emissions. Therefore, the estimated emission reduction, risk reduction and costs discussed above would also be applicable to the MACT allowable emissions level. We believe that the costs of this option are not reasonable, given the level of emission and risk reduction.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in making our ample margin of safety determination. Considering the health risk information and the unreasonable cost effectiveness of the option identified, we propose that the existing MACT standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

3. What are the results of the technology review?

The results of the technology review for the Group IV Polymers and Resins MACT standards are discussed above in section IV.A.2. We identified no advancements in practices, processes and control technologies applicable to the emission sources in the Group IV Polymers and Resins source categories in our technology review.

4. What other actions are we proposing?

a. SSM Provisions

The proposed changes to the SSM provisions for the Group IV Polymers and Resins MACT standards, which apply to the PET source category, are discussed above in section IV.A.3.a.

b. Electronic Reporting

The proposed addition of electronic reporting requirements for performance tests for the Group IV Polymers and Resins MACT standards, which apply to the PET source category, are discussed above in section IV.A.3.b.

V. Analytical Results and Proposed Decisions for Pesticide Active Ingredient Production

A. What are the results of the risk assessments?

1. Inhalation Risk Assessment Results

Table 16 provides an overall summary of the inhalation risk assessment results for the source category.

TABLE 16—PAI INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]		Maximum off-site acute noncancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
17	7	7	11,000	0.001	0.7	3	HQ_{REL} = 8 ethylene glycol ethyl ether. HQ_{ERPG-1} = 0.3 chlorine.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the PAI source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.B.3 of this preamble for explanation of acute dose-response values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table 16, the results of the inhalation risk assessment indicated the maximum lifetime individual cancer risk could be up to 7-in-1 million, the maximum chronic noncancer TOSHI value could be up to 0.7, and the maximum off-facility site acute HQ value could be up to 8, based on the actual emissions level and the REL value for ethylene glycol ethyl ethers. The total estimated national cancer incidence from these facilities, based on actual emission levels is 0.001 excess cancer cases per year or one case in every 1,000 years.

Based on our analysis, we estimate that the MACT-allowable emissions levels from process vents for organic HAP emissions could be up to five times the actual emissions and the MACT-allowable level for chlorine and HCl emissions could be up to six times the actual emissions from this source category. However, the highest cancer risks are caused by fugitive emissions and the application of the factor of five to the organic HAP emissions from point sources did not result in cancer risks in excess of the levels resulting from actual fugitive source emissions. Therefore, the cancer risk results for MACT-allowable emissions are approximately equal to those for actual emissions. The highest TOSHI at the MACT-allowable level is approximately 3. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

Three facilities reported emissions of PB–HAP, including lead compounds, PCBs and hexachlorobenzene. We typically would compare the facility-specific emission rates of each of these PB–HAP to the TRIM–Screen emission threshold values to assess the potential for significant human health risks or environmental risks via non-inhalation pathways. However, while lead is a PB–HAP, the National Ambient Air Quality Standards (NAAQS) value (which was used for the chronic noncancer risk assessment) takes into account air-related multipathway exposures, so a

separate multipathway screening value was not developed here. Since we did not estimate any exceedances of the NAAQS in our chronic noncancer risk assessment, we do not expect any unacceptable multipathway exposure and risk of concern due to lead emissions from these facilities. In addition, there is currently not a screening value for PCBs or hexachlorobenzene, and they were not evaluated for potential non-inhalation risks.

2. Facility-Wide Risk Assessment Results

Table 17 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels. For detailed facility-specific results, see Appendix 4 of the *Draft Residual Risk Assessment for 7 Source Categories* in the docket for this rulemaking.

TABLE 17—PAI FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	17
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	20
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the PAI source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities at which the PAI source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	4
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	2
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	1
Number of facilities at which the PAI source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the PAI MACT standards is estimated to be 20-in-1 million, based on actual emissions. Of the 17 facilities included in this analysis, none have a facility-wide MIR of 100-in-1 million. There are 12 facilities with facility-wide MIR of 1-in-1 million or greater (2 facilities with an MIR of 20 in a million and 2 facilities with an MIR of 10 in a million; the remaining 8 facilities have an MIR below 10 in a million). Four of these facilities have PAI production operations that contribute greater than 50 percent to the facility-wide risks.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be 2, based on actual emissions. Of the 17 facilities included in this analysis, one has a facility-wide maximum chronic noncancer TOSHI values greater than 1 (TOSHI of 2).

3. What is our proposed decision regarding risk acceptability?

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the PAI source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be up to 7-in-1 million due to both actual and allowable emissions. This value is considerably less than 100-in-1 million, which is the presumptive level of acceptability. The risk analysis also shows low cancer incidence (1 in every 1,000 years) and that chronic noncancer health impacts are unlikely at the actual emissions levels.

We estimate that the worst-case acute HQ value could exceed a value of 1 for six HAP: ethylene glycol ethyl ethers (one facility); acrolein (one facility); chloroform (one facility); nickel compounds (one facility); chlorine (one facility); and formaldehyde (one facility). One facility had acute HQ greater than 1 for three HAP (ethyl glycol ethyl ether, acrolein and nickel). The potential maximum HQ is up to 8, based on the acute REL dose-response value for ethylene glycol ethyl ether. Four of the 17 facilities in this source category had an estimated HQ greater than 1. All other facilities modeled had an HQ less than 1. The maximum HQ based on an ERPG–1 or AEGL–1 dose-response value is 0.3, based on the AEGL–1 for chlorine. As described earlier in this preamble, the acute assessment includes some conservative assumptions and some uncertainties. Considering the improbable assumption that worst-case meteorological conditions are present at the same time that maximum hourly emissions of ethylene glycol ethyl ether exceed the average hourly emission rate by a factor of 10 at all emission points simultaneously for three of these four facilities or a factor of 2 at all emission points simultaneously for the other facility, coincident with individuals being in the location of maximum impact and considering the low acute HQ values, based on the AEGL–1 and ERPG–1 dose-response values collectively with the REL values, we believe it is unlikely that HAP emissions from this source category would result in acute health effects.

Our screening level evaluation of the potential health risks associated with emissions of PB–HAP did not indicate potential for adverse multipathway impacts due to emissions of lead. While there are no screening values for PCB and hexachlorobenzene, these HAP are not emitted in appreciable quantities and are not expected to cause multipathway impacts of concern.

Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 20-in-1 million. The maximum chronic noncancer TOSHI is estimated to be 2, but the source category contributes less than 5 percent to the maximum facility-wide TOSHI.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the risks from the PAI source category are acceptable.

4. What is our proposed decision regarding ample margin of safety?

We considered whether the MACT standards provide an ample margin of safety to protect public health. In this analysis, we investigated available

emissions control options that might reduce the risk associated with emissions from the source category and considered this information along with all of the health risks and other health information considered in the risk acceptability determination.

For the PAI source category, we identified only one control option to further address risks from equipment leaks, which were shown to contribute 100 percent to the maximum individual cancer risks for this source category. This control option would require sources to install leakless valves to prevent leaks from those components.

We estimated HAP reduction resulting from this control option is approximately 101 tpy from the baseline actual emissions level. We estimated that achieving these reductions would involve a capital cost of approximately $180,000,000, a total annualized cost of about $25,000,000 and a cost effectiveness of $244,000 per ton of HAP emissions reduced. The additional control requirement would achieve approximately 60-percent reduction in baseline risks at a very high cost. We estimate that the MACT allowable emissions from equipment leaks at this source category are approximately equal to the reported, actual emissions. Therefore, the estimated emission reduction, risk reduction and costs discussed above would also be applicable to the MACT allowable emissions level. We believe that the costs of this option are not reasonable, given the level of emission and risk reduction.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in making our ample margin of safety determination. Considering the health risk information and the unreasonable cost effectiveness of the option identified, we propose that the existing MACT standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

B. What are the results of the technology review?

In the decade since the PAI NESHAP was promulgated, the EPA has developed 19 air toxics regulations for source categories that emit organic HAP from the same type of emissions sources that are present in the PAI source category. We reviewed the regulatory requirements and/or technical analyses for these 19 regulations for new practices, processes and control technologies. We also conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the Agricultural Chemical Manufacturing and the SOCMI categories with permits dating back to 1997.

We identified no advancements in practices, processes and control technologies applicable to the emission sources in the PAI source category in our technology review.

C. What other actions are we proposing?

1. SSM Provisions

As we have done in other recent risk and technology rulemakings, we are proposing to eliminate the SSM exemption in the PAI MACT standards. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing that standards in this rule would apply at all times. We are proposing several revisions to 40 CFR part 63, subpart MMM. Specifically, we are proposing to revise Table 1 to indicate that the requirements of 40 CFR 63.6(e) of the General Provisions do not apply. The 40 CFR 63.6(e) requires owner or operators to act according to the general duty to ''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.'' We are separately proposing to incorporate this general duty to minimize into 40 CFR 63.1360(e). The 40 CFR 63.6(e) also requires the owner or operator of an affected source to develop a written SSM plan. We are proposing to remove the SSM plan requirement. We are proposing to remove the explanation of applicability of emissions standards during periods SSM in 40 CFR 63.1360(e); remove the malfunction plan from 40 CFR 63.1367(a); clarify that representative conditions do not include periods of SSM throughout the rule; remove references to periods of SSM in monitoring; and revise the SSM-associated recordkeeping and reporting requirements in 40 CFR 63.1367(a) to require reporting and recordkeeping for periods of malfunction. We are also proposing to revise Table 1 to indicate that SSM-related provisions in 40 CFR 63.6(e)(1), 63.6(e)(3), 63.6(f)(1); 40 CFR 63.7(e)(1); 40 CFR 63.8(c)(1)–(3); 40 CFR 63.10(c)(10), (11), and (15); and 40 CFR 63.10(d)(5) of the General Provisions do not apply. We are also proposing to add requirements in 40 CFR 63.1363(b)(4) to clarify that PRD releases to the atmosphere are violations of the emissions standards and to require pressure release alarms and to add requirements in 40 CFR 63.1463(h)(4) to require reporting of any pressure device releases to the atmosphere with the periodic report. In addition, following our recently established practice in other risk and technology review rulemakings, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

2. Electronic Reporting

To increase the ease and efficiency of data submittal and improve data accessibility, we are proposing to require the submission of electronic copies of required performance tests for test methods that are supported by the ERT to EPA's WebFIRE database. These provisions are added in 40 CFR 63.1368(p).

VI. Analytical Results and Proposed Decisions for Polyether Polyols Production

A. What are the results of the risk assessments?

1. Inhalation Risk Assessment Results

Table 19 provides an overall summary of the inhalation risk assessment results for the source category.

TABLE 19—PEPO INHALATION RISK ASSESSMENT RESULTS

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Population at risk ≥ 1-in-1 million	Annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI [3]		Maximum off-site acute noncancer HQ [4]
	Actual emissions level	Allowable emissions level			Actual emissions level	Allowable emissions level	
23	30	30	160,000	0.02	0.8	0.8	HQ_{REL} = 6 glycol ethers. HQ_{AEGL-1} = 0.1 acrolein.

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk.
[3] Maximum TOSHI. The target organ with the highest TOSHI for the PEPO source category is the respiratory system.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value, which, in most cases, is the REL. When HQ values exceed 1, we also show HQ values using the next lowest available acute dose-response value. See section III.B.3 of this preamble for explanation of acute dose-response values.

The inhalation risk modeling was performed using actual emissions level data. As shown in Table 19, the results of the inhalation risk assessment indicated the maximum lifetime individual cancer risk could be up to 30-in-1 million, the maximum chronic noncancer TOSHI value could be up to 0.8 and the maximum off-facility site acute HQ value could be up to 6, based on the actual emissions level and the REL value for glycol ethers. The total estimated national cancer incidence from these facilities, based on actual emission levels is 0.02 excess cancer cases per year or one case in every 50 years.

Based on our analysis, we estimate that the MACT-allowable emissions level for organic non-epoxide HAP emissions from certain process vents could be up to five times the actual emissions from this source category. However, the highest cancer risks are caused by epoxide emissions, and the application of the factor of five to the non-epoxide organic HAP emissions from point sources did not result in cancer risks in excess of the levels resulting from actual epoxide emissions. Therefore, the cancer risk results for MACT-allowable emissions are approximately equal to those for actual emissions. For more detail about this estimate of the ratio of actual to MACT-allowable emissions and the estimation of MACT-allowable emission levels and associated risks and impacts, see the memorandum, *MACT Allowable Emissions and Risks for the Pesticide Active Ingredient, Polyether Polyols, and Polymers and Resins IV Production Source Categories,* in the docket for this rulemaking.

Two facilities reported emissions of PB–HAP, including fluoranthene (a POM HAP) and lead compounds. We typically compare the facility-specific emission rates of PB–HAP to the TRIM–Screen emission threshold values to assess the potential for significant human health risks or environmental risks via non-inhalation pathways. However, while lead is a PB–HAP, 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 lead emissions from these facilities. For fluoranthene emissions, one facility emits this PB–HAP and the emissions exceed the screening-level threshold level for POM by a factor of four. Based on this screening analysis, we cannot rule out the potential for multipathway impacts of concern due to emissions of fluoranthene from the one facility. However, we do not expect fluoranthene emissions from PEPO processes, and we specifically request data regarding these emissions.

2. Facility-Wide Risk Assessment Results

Table 20 displays the results of the facility-wide risk assessment. This assessment was conducted based on actual emission levels. For detailed facility-specific results, see Appendix 4 of the *Draft Residual Risk Assessment for 7 Source Categories* in the docket for this rulemaking.

TABLE 20—PEPO FACILITY-WIDE RISK ASSESSMENT RESULTS

Number of facilities analyzed	23
Cancer Risk:	
Estimated maximum facility-wide individual cancer risk (in 1 million)	30
Number of facilities with estimated facility-wide individual cancer risk of 100-in-1 million or more	0
Number of facilities at which the PEPO source category contributes 50 percent or more to the facility-wide individual cancer risks of 100-in-1 million or more	0
Number of facilities at which the PEPO source category contributes 50 percent or more to the facility-wide individual cancer risk of 1-in-1 million or more	14
Chronic Noncancer Risk:	
Maximum facility-wide chronic noncancer TOSHI	2
Number of facilities with facility-wide maximum noncancer TOSHI greater than 1	1
Number of facilities at which the PEPO source category contributes 50 percent or more to the facility-wide maximum noncancer TOSHI of 1 or more	0

The facility-wide MIR from all HAP emissions at a facility that contains sources subject to the PEPO MACT standards is estimated to be 30-in-1 million, based on actual emissions. Of the 23 facilities included in this

analysis, none have a facility-wide MIR of 100-in-1 million. There are 20 facilities with a facility-wide MIR of 1-in-1 million or greater (10 of these facilities have a facility-wide MIR equal to or greater than 10 in a million). Fourteen of these facilities have PEPO production operations that contribute greater than 50 percent to the facility-wide risks.

The facility-wide maximum individual chronic noncancer TOSHI is estimated to be 2 based on actual emissions. Of the 23 facilities included in this analysis, one has facility-wide maximum chronic noncancer TOSHI values greater than 1 (TOSHI of 2).

3. What is our proposed decision regarding risk acceptability?

As noted in section III.C of this preamble, we weigh all health risk factors in our risk acceptability determination, including the MIR; the number of persons in various cancer and noncancer risk ranges; cancer incidence; the maximum noncancer HI; the maximum acute noncancer HQ; the extent of noncancer risks; the potential for adverse environmental effects; distribution of cancer and noncancer risks in the exposed population; and risk estimation uncertainty (54 FR 38044, September 14, 1989).

For the PEPO source category, the risk analysis we performed indicates that the cancer risks to the individual most exposed could be up to 30-in-1 million due to both actual and allowable emissions. This value is considerably less than 100-in-1 million, which is the presumptive level of acceptability. The risk analysis also shows low cancer incidence (1 in every 50 years). The chronic noncancer TOSHI is estimated to be 1 due to emissions of chlorine.

We estimate that the worst-case acute HQ value could exceed a value of 1 for two HAP, glycol ethers and acrolein, with a potential maximum acute HQ up to 6, based on the acute REL dose-response value for glycol ethers. For glycol ethers, we used the lowest acute REL of any of the glycol ethers with such health values (*i.e.,* ethylene glycol monomethyl ether) to assess the other glycol ethers without such values. Two of the 23 facilities in this source category had an estimated acute HQ greater than 1. All other facilities modeled had an acute HQ less than 1. The maximum acute HQ (based on the AEGL–1 dose-response value for acrolein) is 0.1. As described earlier in this preamble, the acute assessment includes some conservative assumptions and some uncertainties. Considering the improbable assumption that worst-case meteorological conditions are present at the same time that maximum hourly emissions of glycol ethers exceed the average hourly emission rate by a factor of 2 at all emission points simultaneously for both of these facilities and coincident with individuals being in the location of maximum impact, and considering the low acute HQ values, based on the AEGL–1 and ERPG–1 dose-response values collectively with the REL values, we believe it is unlikely that HAP emissions from this source category would result in acute health effects.

Our screening level evaluation of the potential health risks associated with emissions of PB–HAP did not indicate potential for adverse multipathway impacts due to emissions of lead. The screening level evaluation indicated that the one facility that reported fluoranthene emissions exceeded the screening-level threshold for POM by a factor of 4; however, as explained in section III.B.7.e, our screening methods use worst-case scenarios and the results are biased high.

Our additional analysis of facility-wide risks showed that the maximum facility-wide cancer risk is 30-in-1 million. The maximum chronic noncancer TOSHI is estimated to be 3, but the source category contributes less than one-third to the maximum facility-wide TOSHI.

The EPA has weighed the various health risk measures and health factors, including risk estimation uncertainty, discussed above and in section III.B.7 of this preamble, and we are proposing that the risks from the PEPO source category are acceptable.

4. What is our proposed decision regarding ample margin of safety?

We considered whether the MACT standards provide an ample margin of safety to protect public health. In this analysis, we investigated available emissions control options that might reduce the risk associated with emissions from the source category and considered this information along with all of the health risks and other health information considered in the risk acceptability determination.

For the PEPO source category, we identified only one control option to further address risks from equipment leaks, which were shown to contribute approximately 47 percent to the maximum individual cancer risks for this source category. This control option would require sources to install leakless valves to prevent leaks from those components.

We estimated HAP reduction resulting from this control option is approximately 59 tpy from the baseline actual emissions level. We estimated that achieving these reductions would involve a capital cost of about $104,000,000, a total annualized cost of about $14,000,000 and a cost effectiveness of $244,000 per ton of HAP emissions reduced. The additional control requirement would achieve approximately 30-percent reduction in baseline risks at a very high cost. We estimate that the MACT allowable emissions from equipment leaks at this source category are approximately equal to the reported, actual emissions. Therefore, the estimated emission reduction, risk reduction and costs discussed above would also be applicable to the MACT allowable emissions level. We believe that the costs of this option are not reasonable, given the level of emission and risk reduction.

In accordance with the approach established in the Benzene NESHAP, the EPA weighed all health risk measures and information considered in the risk acceptability determination, along with the costs and economic impacts of emissions controls, technological feasibility, uncertainties and other relevant factors in making our ample margin of safety determination. Considering the health risk information and the unreasonable cost effectiveness of the option identified, we propose that the existing MACT standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect.

B. What are the results of the technology review?

In the decade since the PEPO NESHAP was promulgated, EPA has developed 19 air toxics regulations for source categories that emit organic HAP from the same type of emissions sources that are present in the PEPO source category. We reviewed the regulatory requirements and/or technical analyses for these 19 regulations for new practices, processes and control technologies. We also conducted a search of the RBLC for controls for VOC- and HAP-emitting processes in the SOCMI categories with permits dating back to 1997.

We identified no advancements in practices, processes and control technologies applicable to the emission sources in the PEPO source category in our technology review.

C. What other actions are we proposing?

1. SSM Provisions

As we have done in other recent risk and technology review rulemakings, we are proposing to eliminate the SSM

exemption in the PEPO MACT standards. Consistent with *Sierra Club* v. *EPA,* the EPA is proposing that standards in this rule would apply at all times. We are proposing several revisions to 40 CFR part 63, subpart PPP. Specifically, we are proposing to revise Table 1 to indicate that the requirements of 40 CFR 63.6(e) of the General Provisions do not apply. The 40 CFR 63.6(e) requires owners or operators to act according to the general duty to ''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.'' We are separately proposing to incorporate this general duty to minimize into 40 CFR 63.1420(h). The 40 CFR 63.6(e) also requires the owner or operator of an affected source to develop a written SSM plan. We are proposing to remove the SSM plan requirement. We are proposing to remove the explanation of applicability of emissions standards during periods SSM in 40 CFR 63.1420(h); remove the malfunction plan from 40 CFR 63.1439(b); clarify that representative conditions do not include periods of SSM throughout the rule; remove references to periods of SSM in monitoring; remove the provisions for excused excursions in 40 CFR 63.1438(g) and revise the SSM-associated recordkeeping and reporting requirements in 40 CFR 63.1439(b) to require reporting and recordkeeping for periods of malfunction. We are also proposing to revise Table 1 to indicate that SSM-related provisions in 40 CFR 63.6(e)(1), 63.6(e)(3), 63.6(f)(1); 40 CFR 63.7(e)(1); 40 CFR 63.8(c)(1); 40 CFR 63.10(c)(10), (11) and (15); and 40 CFR 63.10(d)(5) of the General Provisions do not apply. We are also proposing to add requirements in 40 CFR 63.1434(c) to clarify that PRD releases to the atmosphere are violations of the emissions standards and to require pressure release alarms and to add requirements in 40 CFR 63.1439(e)(9) to require reporting of any pressure device releases to the atmosphere with the periodic report. In addition, following our practice established in other risk and technology review rulemakings, we are proposing to promulgate an affirmative defense against civil penalties for exceedances of emission standards caused by malfunctions, as well as criteria for establishing the affirmative defense.

2. Electronic Reporting

To increase the ease and efficiency of data submittal and improve data accessibility, we are proposing to require the submission of electronic copies of required performance tests for test methods that are supported by the ERT to EPA's WebFIRE database. These provisions are added in 40 CFR 63.1439(e)(10).

VII. Compliance Dates

For the three MACT standards being addressed in this action, the proposed compliance date for the revised SSM requirements and electronic reporting requirements is the effective date of the promulgated revised standards. We are proposing these compliance dates because these requirements should be immediately implementable by the facilities upon the next occurrence of a malfunction or the performance of a performance test that is required to be submitted to the ERT. We also believe that the facilities should already be able to comply with the existing standards during periods of startup and shutdown.

In accordance with CAA section 112(i)(3), the compliance date for PRD monitoring is 3 years from the effective date of the promulgated standards. This time period will allow facilities to purchase, install and test the equipment.

For the facility in the PET continuous TPA high viscosity multiple end finisher subcategory subject to the Group IV Polymers and Resins MACT standards, the proposed compliance date for the new MACT standards applicable to equipment leaks and PCCT is the effective date of the promulgated standards. Since this facility is already performing the proposed equipment leak requirements and meeting the proposed PCCT standards, the facility should be able to comply immediately with the promulgated rule provisions. It should be feasible for the facility to conduct any additional recordkeeping required upon the promulgation date and information required in the next periodic report for these requirements would only reflect the period of time between the promulgation date and the periodic report due date.

Beyond the revised SSM and electronic reporting requirements, there are no changes to the PAI and PEPO MACT standards.

VIII. Summary of Cost, Environmental and Economic Impacts

A. What are the affected sources?

We anticipate that each facility in these seven source categories will be affected by these proposed amendments. We estimate there are 17 existing facilities subject to the PAI MACT standards, 23 existing facilities subject to the PEPO MACT standards and 30 existing facilities subject to the Group IV Polymers and Resins MACT standards. We do not know of any new facilities that are expected to be constructed in the foreseeable future. Therefore, our impact analysis is focused on the existing sources affected by the MACT standards for these source categories.

B. What are the air quality impacts?

No quantifiable air quality impacts are expected to result from the proposed amendments to these three MACT standards for seven source categories. For the two emissions sources, we are proposing new emissions standards for equipment leaks and PCCT in the PET continuous TPA high viscosity multiple end finisher subcategory regulated by the Group IV Polymers and Resins MACT standards, we are proposing to establish the MACT floor at the current emissions levels for the one facility in this subcategory. As a result, no additional emission reduction will be realized, although increases in emissions in the future will be prevented. For the proposed revisions to the MACT standards regarding SSM, while these changes may result in fewer emissions during these periods or less frequent periods of startup, shutdown or malfunction, these possible emission reductions are difficult to quantify and are not included in our assessment of air quality impacts.

C. What are the cost impacts?

Under the proposed amendments, facilities in all seven source categories are expected to incur initial capital and annual operation and maintenance costs for the installation of PRD monitoring systems. The capital costs for each facility were estimated, based on data collected for other EPA projects. The memorandum, *Draft Cost Impacts of the Revised NESHAP for 7 Source Categories,* includes a complete description of the cost estimate methods used for this analysis and is available in the docket.

TABLE 21—COST IMPACTS OF THE PROPOSED PRD MONITORING REQUIREMENTS

Source category	Total capital costs (million 2010 $)	Total annual costs (million 2010 $/year)
PAI	3.2	0.5
PEPO	4.7	0.7
P&R IV:		
ABS	0.9	0.1
MBS	0.4	0.05
Polystyrene Resins	2.0	0.3
PET	2.8	0.4
SAN	0.4	0.05

D. What are the economic impacts?

We estimate that there will be no more than a 0.5-percent price change and a similar reduction in output associated with the proposal. This is based on the costs of the rule and responsiveness of producers and consumers based on supply and demand elasticities for the industries affected by this proposal. The impacts to affected firms will be low because the annual compliance costs are quite small when compared to the annual revenues for the affected parent firms (much less than 1 percent for each). The impacts to affected consumers should also be quite small. Thus, there will not be any significant impacts on affected firms and their consumers as a result of this proposal.

E. What are the benefits?

No quantifiable monetized benefits are expected to result from the proposed amendments to these three MACT standards for seven source categories. As explained in the air quality impacts section, there are no quantifiable emission reductions associated with the proposed amendments for these MACT standards and, therefore, there are no quantifiable health benefits to associate with reduced emissions.

IX. Request for Comments

We are soliciting comments on this proposed action. All comments received during the comment period will be considered. In addition to general comments on the proposed actions, we are also interested in any additional data that may help to reduce the uncertainties inherent in the risk assessments. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Please see the following section for more information on submitting data.

X. Submitting Data Corrections

The facility-specific data used in the source category risk analyses and facility-wide analyses for each source category subject to this action are available for download on the RTR Web page at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* These data files include detailed information for each HAP emissions release point at each facility included in the source category and all other HAP emissions sources at these facilities (facility-wide emissions sources). However, it is important to note that the source category risk analysis included only those emissions tagged with the MACT code associated with the source category subject to the risk analysis.

If you believe the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide the data that you believe are more accurate, 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. The data fields that may be revised include the following:

Data element	Definition
Control Measure	Are control measures in place? (yes or no).
Control Measure Comment	Select control measure from list provided, and briefly describe the control measure.
Delete	Indicate here if the facility or record should be deleted.
Delete Comment	Describes the reason for deletion.
Emission Calculation Method Code For Revised Emissions	Code description of the method used to derive emissions. For example, continuous emission monitoring, material balance, stack test, *etc.*
Emission Process Group	Enter the general type of emission process associated with the specified emission point.
Fugitive Angle	Enter release angle (clockwise from true North); orientation of the y-dimension relative to true North, measured positive for clockwise starting at 0 degrees (maximum 89 degrees).
Fugitive Length	Enter dimension of the source in the east-west (x-) direction, commonly referred to as length (ft).
Fugitive Width	Enter dimension of the source in the north-south (y-) direction, commonly referred to as width (ft).
Malfunction Emissions	Enter total annual emissions due to malfunctions (tpy).
Malfunction Emissions Max Hourly	Enter maximum hourly malfunction emissions here (lb/hr).
North American Datum	Enter datum for latitude/longitude coordinates (NAD27 or NAD83); if left blank, NAD83 is assumed.
Process Comment	Enter general comments about process sources of emissions.
REVISED Address	Enter revised physical street address for MACT facility here.
REVISED City	Enter revised city name here.

Data element	Definition
REVISED County Name	Enter revised county name here.
REVISED Emission Release Point Type	Enter revised Emission Release Point Type here.
REVISED End Date	Enter revised End Date here.
REVISED Exit Gas Flow Rate	Enter revised Exit Gas Flowrate here (ft^3/sec).
REVISED Exit Gas Temperature	Enter revised Exit Gas Temperature here (F).
REVISED Exit Gas Velocity	Enter revised Exit Gas Velocity here (ft/sec).
REVISED Facility Category Code	Enter revised Facility Category Code here, which indicates whether facility is a major or area source.
REVISED Facility Name	Enter revised Facility Name here.
REVISED Facility Registry Identifier	Enter revised Facility Registry Identifier here, which is an ID assigned by the EPA Facility Registry System.
REVISED HAP Emissions Performance Level Code	Enter revised HAP Emissions Performance Level here.
REVISED Latitude	Enter revised Latitude here (decimal degrees).
REVISED Longitude	Enter revised Longitude here (decimal degrees).
REVISED MACT Code	Enter revised MACT Code here.
REVISED Pollutant Code	Enter revised Pollutant Code here.
REVISED Routine Emissions	Enter revised routine emissions value here (tpy).
REVISED SCC Code	Enter revised SCC Code here.
REVISED Stack Diameter	Enter revised Stack Diameter here (ft).
REVISED Stack Height	Enter revised Stack Height here (Ft).
REVISED Start Date	Enter revised Start Date here.
REVISED State	Enter revised State here.
REVISED Tribal Code	Enter revised Tribal Code here.
REVISED Zip Code	Enter revised Zip Code here.
Shutdown Emissions	Enter total annual emissions due to shutdown events (tpy).
Shutdown Emissions Max Hourly	Enter maximum hourly shutdown emissions here (lb/hr).
Stack Comment	Enter general comments about emission release points.
Startup Emissions	Enter total annual emissions due to startup events (tpy).
Startup Emissions Max Hourly	Enter maximum hourly startup emissions here (lb/hr).
Year Closed	Enter date facility stopped operations.

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 No. EPA–HQ–OAR–2011–0435 (through one of the methods described in the **ADDRESSES** section of this preamble). To expedite review of the revisions, it would also be helpful if you submitted a copy of your revisions to the EPA directly at *RTR@epa.gov* in addition to submitting them to the docket.

5. If you are providing comments on a facility with multiple source categories, you need only submit one file for that facility, which should contain all suggested changes for all source categories at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Access files, which are provided on the *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* Web page.

XI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it raises novel legal and policy issues. Accordingly, the EPA submitted this action to OMB for review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

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 requirements are not enforceable until OMB approves them. 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 CAA section 114 (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 agency policies set forth in 40 CFR part 2, subpart B.

The OMB has previously approved the information collection requirements contained in the existing regulations being amended with this proposed rule (*i.e.,* 40 CFR part 63, subparts JJJ, MMM, and PPP) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Burden is defined at 5 CFR 1320.3(b).

For these proposed rules, the EPA is adding affirmative defense to the estimates of burden in the ICR for these rules. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $1,459 annually per MACT standard and is based on the time and effort

required of a source to review relevant data, interview plant employees and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above) and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than 1 or 2 such occurrences for all sources subject to subparts JJJ, MMM and PPP over the 3-year period covered by this ICR. We expect to gather information on such events in the future and will revise this estimate as better information becomes available.

1. Group IV Polymers and Resins MACT Standards

The ICR document prepared by the EPA for the amendments to the Group IV Polymers and Resins MACT standards has been assigned EPA ICR number 1737.01. Burden changes associated with these amendments would result from new recordkeeping and reporting requirements associated with the cooling towers and equipment leak provisions for one facility and PRD monitoring systems and affirmative defense provisions for all facilities subject to the MACT standards.

We estimate 30 regulated facilities are currently subject to 40 CFR part 63, subpart JJJ. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart JJJ is estimated to be 327 labor hours at a cost of $19,947 per year. There is no estimated change in annual burden to the Federal government for these amendments.

2. Pesticide Active Ingredient Production MACT Standards

The ICR document prepared by the EPA for the amendments to the PAI MACT standards has been assigned EPA ICR number 1807.05. Burden changes associated with these amendments would result from new recordkeeping and reporting requirements associated with PRD monitoring systems and affirmative defense provisions for all facilities subject to the MACT standards.

We estimate 17 regulated facilities are currently subject to 40 CFR part 63, subpart MMM. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart MMM is estimated to be 187 labor hours at a cost of $11,433 per year. There is no estimated change in annual burden to the Federal government for these amendments.

3. Polyether Polyols Production MACT Standards

The ICR document prepared by the EPA for the amendments to the PEPO MACT standards has been assigned EPA ICR number 1811.06. Burden changes associated with these amendments would result from new recordkeeping and reporting requirements associated with PRD monitoring systems and affirmative defense provisions for all facilities subject to the MACT standards.

We estimate 23 regulated facilities are currently subject to 40 CFR part 63, subpart PPP. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart PPP is estimated to be 253 labor hours at a cost of $15,433 per year. There is no estimated change in annual burden to the Federal government for these amendments.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When these ICR are approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

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, which includes this ICR, under Docket ID number EPA–HQ–OAR–2011–0435. Submit any comments related to the ICR to the EPA and OMB. See the 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 EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after January 9, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by February 8, 2012. 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 generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. According to the SBA small business standards definitions, for the Group IV Polymers and Resins source categories, which have the NAICS code of 325211 (*i.e.,* Plastics Material and Resin Manufacturing), the SBA small business

size standard is 750 employees. For the PEPO source category, which has the NAICS code of 325199 (*i.e.,* All Other Basic Organic Chemical Manufacturing), the SBA small business size standard is 1,000 employees. For the PAI source category, which has the NAICS codes of 325199 (*i.e.,* All Other Basic Organic Chemical Manufacturing) and 325320 (*i.e.,* Pesticide and Other Agricultural Chemical Manufacturing), the SBA small business size standards are 1,000 employees and 500 employees, respectively.

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. Only one small business in the PAI source category is impacted and only one small business in the Group IV Polymers and Resins source categories is impacted. For each affected small business, the impact of this proposal is an annual compliance cost of less than 1 percent of the parent firm's revenues. There are no affected small businesses in the PEPO source category. All of the other companies affected by this rule are generally large integrated corporations that are not considered to be small entities per the definitions provided in this section.

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 proposed rule does not contain a Federal mandate 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 proposed rule would not result in expenditures of $100 million or more for state, local and tribal governments, in aggregate, or the private sector in any 1 year. This proposed rule would require the use of PRD monitoring systems, but the nationwide annualized costs of this proposed requirement are estimated to be approximately $2 million for affected sources. Thus, this proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed rule 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. The burden to the respondents and the states is approximately $2,000,000 for the three MACT standards addresses in this proposed rule. Thus, Executive Order 13132 does not apply to this proposed rule.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

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 proposed rule 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, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action would not cause appreciable increases in emissions or emissions-related health risks. The EPA's risk assessments (included in the docket for this proposed rule) demonstrate that the existing regulations are associated with an acceptable level of risk and provide an ample margin of safety to protect public health and prevent adverse environmental effects.

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 under Executive Order 13211, (66 FR 28355, May 22, 2001), because it is not likely to have significant adverse effect on the supply, distribution or use of energy. This action will not create any new requirements and, therefore, no additional costs for sources in the energy supply, distribution or use sectors.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (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. 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 use ASTM D2908–74 or 91 and ASTM D3370–76 or 96a for the PCCT at the one Group IV Polymers and Resins facility in the PET continuous TPA high viscosity multiple end finisher subcategory. No applicable VCS were identified for these methods.

The EPA welcomes comments on this aspect of this proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

Under section 63.7(f) and section 63.8(f) of Subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications or procedures in the proposed rule.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

To examine the potential for any environmental justice issues that might be associated with the level of the standards for each source category, we performed a comparative analysis of the demographics of the population within the vicinity of the facilities in these source categories (*i.e.,* within a 3-mile radius) and the national average demographic distributions. The results of this analysis show that most demographic categories are within 2 percentage points of national averages, except for the African American population, which exceeds the national average by 6 percentage points (18 percent versus 12 percent). The EPA has determined that the current health risks posed by emissions from these source categories are acceptable and provide an ample margin of safety to protect public health and prevent adverse environmental effects. The proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it maintains the level of environmental protection for all affected populations.

List of Subjects for 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 30, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency (EPA) proposes to amend Title 40, chapter I, of the Code of Federal Regulations (CFR) as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart JJJ—[Amended]

2. Section 63.1310 is amended by:

a. Revising paragraphs (a)(4) introductory text, (a)(4)(iv) and (a)(4)(vi);

b. Revising paragraphs (c)(1) and (d) introductory text;

c. Revising paragraph (j); and

d. Adding paragraph (k) to read as follows:

§ 63.1310 Applicability and designation of affected sources.

(a) * * *

(4) *Emission points and equipment.* The affected source also includes the emission points and components specified in paragraphs (a)(4)(i) through (vi) of this section that are associated with each applicable group of one or more TPPU constituting an affected source.

* * * * *

(iv) Each process contact cooling tower used in the manufacture of poly (ethylene terephthalate) resin (PET) that is associated with a new affected source.

* * * * *

(vi) Components required by or utilized as a method of compliance with this subpart, which may include control devices and recovery devices.

* * * * *

(c) * * *

(1) Components and equipment that do not contain organic HAP and is located within a TPPU that is part of an affected source;

* * * * *

(d) *Processes excluded from the affected source.* The processes specified in paragraphs (d)(1) through (5) of this section are not part of the affected source and are not subject to the requirements of both this subpart and subpart A of this part:

* * * * *

(j) *Applicability of this subpart.* (1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(2) The emission limitations set forth in subpart H of this part, as referred to in § 63.1331, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized, resulting in cessation of the emissions to which § 63.1331 applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment

(4) *General duty.* At all times, the owner or operator 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. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which 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.

(k) *Affirmative defense for exceedance of emission limit during malfunction.* In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, the owner or operator must timely meet the notification requirements in paragraph (k)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions:

(A) Were caused by a sudden, infrequent and unavoidable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the affected source experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (k)(1) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45-day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

3. Section 63.1311 is amended by revising paragraph (d)(6) to read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

* * * * *

(d) * * *

(6) Notwithstanding paragraphs (d)(1) through (5) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than August 6, 2002.

* * * * *

4. Section 63.1312 is amended by:

a. Removing the term ''Start-up, shutdown, and malfunction plan (§ 63.101)'' in paragraph (a); and

b. Adding the definition for ''Affirmative defense'' in alphabetical order in paragraph (b) to read as follows:

§ 63.1312 Definitions.

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

§ 63.1319 [Amended]

5. Section 63.1319 is amended by removing ''Lfimits'' and adding in its place ''limits'' in the heading for paragraph (c).

6. Section 63.1324 is amended by revising the first two sentences of paragraph (c)(4)(ii)(C) to read as follows:

§ 63.1324 Batch process vents—monitoring equipment.

* * * * *

(c) * * *

(4) * * *

(ii) * * *

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than malfunctions. * * *

* * * * *

7. Section 63.1329 is amended by:

a. Revising the first sentence of paragraph (c) introductory text; and

b. Adding paragraphs (c)(2)(i) and (ii) to read as follows:

§ 63.1329 Process contact cooling towers provisions.

* * * * *

(c) *Existing affected source requirements.* The owner or operator of an existing affected source subject to this section who manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process and who is subject or becomes subject to 40 CFR part 60, subpart DDD, shall maintain an ethylene glycol concentration in the process contact cooling tower at or below 6.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days. * * *

* * * * *

(2) * * *

(i) Where 40 CFR 60.564(j)(1) requires the use of ASTM D2908–74 or 91, ''Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography,'' ASTM D2908–91 (2011), D2908–91 (2005), D2908–91 (2001), D2908–91 or D2908–74 may be used.

(ii) Where 40 CFR 60.564(j)(1)(i) requires the use of ASTM D3370–76 or 96a, ''Standard Practices for Sampling Water,'' ASTM D3370–10, D3370–08, D3370–07, D3370–96a or D3370–76 may be used.

8. Section 63.1331 is amended by adding paragraphs (a)(9) and (c) to read as follows:

§ 63.1331 Equipment leak provisions.

(a) * * *

(9) *Requirements for pressure relief devices.* For pressure relief devices, the owner or operator must meet the requirements of this paragraph. Any release to the atmosphere from a pressure relief device in organic HAP service constitutes a violation of this rule. The owner or operator must install, maintain and operate release indicators as specified in paragraphs (a)(9)(i) and (ii) of this section unless the pressure relief routes to a closed vent system and control device designed and operated in accordance with the requirements of this subpart. For any pressure relief devices, the owner or operator must comply with the recordkeeping and reporting provisions in this paragraph (a) and § 63.1335(e)(9). For any release, the owner or operator must submit the report specified in § 63.1335(e)(9), as described in paragraph (a)(9)(iii) of this section.

(i) A release indicator must be properly installed on each pressure relief device in such a way that it will indicate when an emission release has occurred.

(ii) Each indicator must be equipped with an alert system that will notify an operator immediately and automatically when the pressure relief device is open. The alert must be located such that the signal is detected and recognized easily by an operator.

(iii) For any instance that the release indicator indicates that a pressure relief device is open, the owner or operator must notify the Administrator that a pressure release has occurred and

submit to the Administrator the report specified in § 63.1335(e)(9). This report is required even if the owner or operator elects to follow the procedures specified in § 63.1310(k) to establish an affirmative defense.

* * * * *

(c)(1) Each affected source producing PET using a continuous TPA high viscosity multiple end finisher process shall monitor for leaks upon startup following an outage where changes have been made to equipment in gas/vapor or light liquid service. This leak check shall consist of the introduction of hot ethylene glycol vapors into the system for a period of no less than 2 hours during which time sensory monitoring of the equipment shall be conducted.

(2) A leak is determined to be detected if there is evidence of a potential leak found by visual, audible or olfactory means.

(3) When a leak is detected, it shall be repaired as soon as practical, but not later than 15 days after it is detected, except as provided in § 63.171.

(i) The first attempt at repair shall be made no later than 5 days after each leak is detected.

(ii) Repaired shall mean that the visual, audible, olfactory or other indications of a leak have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(4) When a leak is detected, the following information shall be recorded and kept for 2 years and reported in the next periodic report:

(i) The instrument and the equipment identification number and the operator name, initials or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

9. Section 63.1332 is amended by:

a. Removing and reserving paragraph (f)(1); and

b. Revising paragraph (f)(2) introductory text to read as follows:

§ 63.1332 Emissions averaging provisions.

* * * * *

(f) * * *

(2) Emissions during periods of monitoring excursions, as defined in § 63.1334(f). For these periods, the calculation of monthly credits and debits shall be adjusted as specified in paragraphs (f)(2)(i) through (iii) of this section.

* * * * *

10. Section 63.1333 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.1333 Emissions averaging provisions.

(a) Performance testing shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested and in accordance with § 63.7(a)(1), (a)(3), (d), (e)(2), (e)(4), (g) and (h), with the exceptions specified in paragraphs (a)(1) through (5) of this section and the additions specified in paragraphs (b) through (d) of this section. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. Sections 63.1314 through 63.1330 also contain specific testing requirements.

* * * * *

§ 63.1334 [Amended]

11. Section 63.1334 is amended by:

a. Removing and reserving paragraphs (f)(1)(v)(B) through (D);

b. Removing and reserving paragraphs (f)(2)(ii)(B)(*2*) through (*4*);

c. Removing and reserving paragraphs (f)(5)(ii) through (iv);

d. Removing and reserving paragraphs (f)(6)(ii) through (iv); and

e. Removing and reserving paragraph (g).

12. Section 63.1335 is amended by:

a. Revising paragraphs (b)(1) introductory text, (b)(1)(i) introductory text, and (b)(1)(i)(A) and (B);

b. Removing and reserving paragraph ((b)(1)(i)(C));

c. Revising paragraph (b)(1)(ii);

d. Revising paragraph (d)(7)(i);

e. Removing and reserving paragraphs (d)(7)(ii) through (iv);

f. Revising the first sentence of paragraph (e) introductory text, the first sentence of paragraph (e)(3) introductory text, and paragraph (e)(3)(v);

g. Removing and reserving paragraph (e)(3)(viii);

h. Revising paragraph (e)(3)(ix)(B)

i. Revising the first two sentences of paragraph (e)(6) introductory text, (e)(6)(iii)(E), (e)(6)(xii)(A)(*1*), and (e)(6)(xii)(D);

j. Adding paragraphs (e)(9) and (10);

k. Revising paragraph (h)(1)(i);

l. Removing and reserving paragraph (h)(1)(ii)(C);

m. Revising the first sentence of paragraph (h)(1)(iii);

n. Revising paragraphs (h)(2)(iii) through (iv).

The revisions read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) *Malfunction recordkeeping and reporting.* (i) *Records of malfunctions.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (C) of this section.

(A) Records of the occurrence and duration of each malfunction of operation of process equipment or control devices or recovery devices or continuous monitoring systems used to comply with this subpart, and an estimate of the excess emissions released.

(B) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1420(h)(4), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

(ii) *Reports of malfunctions.* For the purposes of this subpart, reports of malfunctions shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section. If a malfunction occurred during the reporting period, the report must include the number, duration, excess emissions estimate and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1420(h)(4), including actions taken to correct a malfunction.

* * * * *

(d) * * *

(7) * * *

(i) Monitoring system malfunctions, breakdowns, repairs, calibration checks and zero (low-level) and high-level adjustments;

* * * * *

(e) * * * In addition to the reports and notifications required by subpart A of this part as specified in Table 1 of this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (10) of this section, as applicable. * * *

* * * * *

(3) * * * Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping or alternative controls; requesting approval to use engineering

assessment to estimate emissions from a batch emissions episode, as described in § 63.1323(b)(6)(i)(C); or wishing to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. * * *

* * * * *

(v) The owner or operator shall report the intent to use alternative emissions standards to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem alternative emissions standards to be equivalent to the standard required by the subpart, under the procedures outlined in § 63.6(g).

* * * * *

(ix) * * *

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), as specified in paragraph (e)(3)(vii) of this section.

* * * * *

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (xi) of this section. In addition, for equipment leaks subject to § 63.1331, with the exception of § 63.1331(c), the owner or operator shall submit the information specified in § 63.182(d) under the conditions listed in § 63.182(d), and for heat exchange systems subject to § 63.1328, the owner or operator shall submit the information specified in § 63.104(f)(2) as part of the Periodic Report required by this paragraph (e)(6). * * *

* * * * *

(iii) * * *

(E) The information in paragraph (b)(1)(ii) of this section for reports of malfunctions.

* * * * *

(xii) * * *

(A) * * *

(*1*) A control or recovery device for a particular emission point or process section has one or more excursions, as defined in § 63.1334(f), for a semiannual reporting period; or

* * * * *

(D) After quarterly reports have been submitted for an emission point for 1 year without one or more excursions occurring (during that year), the owner or operator may return to semiannual reporting for the emission point or process section.

* * * * *

(9) *Pressure relief device deviation report.* If any pressure relief device in organic HAP service or any piece of equipment or closed vent system has discharged to the atmosphere, as specified in § 63.1331(a)(9), the owner or operator must submit to the Administrator in the next Periodic Report:

(i) The source, nature and cause of the discharge.

(ii) The date, time and duration of the discharge.

(iii) An estimate of the quantity of total organic HAP emitted during the discharge and the method used for determining this quantity.

(iv) The actions taken to prevent this discharge.

(v) The measures adopted to prevent future such discharges.

(10) *Electronic reporting.* (i) Within 60 days after the date of completing each performance test (defined in § 63.2), as required in this subpart, the owner or operator must transmit the results of the performance tests required by this subpart to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX) (see *http://www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/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 EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority.

(ii) All reports required by this subpart not subject to the requirements in paragraphs (e)(10)(i) and (ii) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (e)(10)(i) and (ii) of this section in paper format.

* * * * *

(h) * * *

(1) * * *

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation (*e.g.,* a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

* * * * *

(iii) The monitoring system is capable of detecting unchanging data during periods of operation, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (*e.g.,* pH in some scrubbers), and will alert the operator by alarm or other means. * * *

* * * * *

(2) * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through (iii) of this section, for the duration specified in this (h). For any calendar week, if compliance with paragraphs (h)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation.

(iv) For purposes of this paragraph (h), an excursion means that the daily average (or batch cycle daily average) value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value.

13. Table 1 to Part JJJ of Subpart 63 is amended by:

a. Revising entries 63.6(e), 63.6(e)(1)(i), and 63.6(e)(1)(ii);
b. Removing entries 63.6(e)(3)(i) through 63.6(e)(3)(ix);
c. Adding entries 63.6(e)(3) and 63.6(f)(1);
d. Revising entry 63.7(e)(1);
e. Revising entries 63.8(c)(1)(i) and 63.8(c)(1)(iii);
f. Removing entries 63.10(d)(5)(i) and 63.10(d)(5)(ii);
g. Adding entry 63.10(d)(5);
h. Removing footnote (a).

The revisions and additions read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Explanation
* * *	* * *	* * *
§ 63.6(e)	Yes	Except as otherwise specified for individual paragraphs.
§ 63.6(e)(1)(i)	No	See § 63.1310(j)(4) for general duty requirement.
§ 63.6(e)(1)(ii)	No.	
* * *	* * *	* * *
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
* * *	* * *	* * *
§ 63.7(e)(1)	No	See § 63.1333(a).
* * *	* * *	* * *
§ 63.8(c)(1)(i)	No.	
* * *	* * *	* * *
§ 63.8(c)(1)(iii)	No.	
* * *	* * *	* * *
§ 63.10(d)(5)	No	See § 63.1335(b)(1)(ii) for malfunction reporting requirements.
* * *	* * *	* * *

* * * * *

Subpart MMM—[Amended]

14. Section 63.1360 is amended by revising paragraphs (e)(1), (3), and (4) and adding paragraph (k) to read as follows:

§ 63.1360 Applicability.

* * * * *

(e) *Applicability of this subpart.* (1) Each provision set forth in this subpart shall apply at all times.

* * * * *

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with the emissions limitations of this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene emissions limitations of this subpart applicable to such items of equipment.

(4) *General duty.* At all times, the owner or operator 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. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which 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.

* * * * *

(k) *Affirmative defense for exceedance of emission limit during malfunction.* In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, the owner or operator must timely meet the notification requirements in paragraph (k)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions:

(A) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the affected source experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (k)(1) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

15. Section 63.1361 is amended by:

a. Adding in alphabetical order the definition for ''Affirmative defense''.

b. Correcting a typographical error in the definition of ''Group 1 process vent'' by Removing the word ''hydogen'' and adding in its place the word ''hydrogen'' in the definition of ''Group 1 process vent''

The addition reads as follows:

§ 63.1361 Definitions.

* * * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

16. Section 63.1362 is amended by revising paragraph (i) to read as follows:

§ 63.1362 Standards.

(i) *Opening of a safety device.* The owner or operator that opens a safety device, as defined in § 63.1361, is not exempt from applicable standards in order to avoid unsafe conditions. If opening a safety device results in the failure to meet any applicable standard, the owner or operator must still comply with the general duty to minimize emissions. If opening a safety device results in a deviation or excess emissions, such events must be reported as specified in § 63.1368(i). If the owner or operator attributes the event to a malfunction and intends to assert an affirmative defense, the owner or operator is subject to § 63.1360(k).

* * * * *

17. Section 63.1363 is amended by:

a. Revising the first sentence of paragraph (b) introductory text;

b. Adding paragraph (b)(4);

c. Revising paragraph (g)(4)(v)(A);

d. Revising paragraphs (h)(1) introductory text and (h)(1)(i);

e. Adding paragraph (h)(1)(iii);

f. Adding paragraph (h)(4).

The additions and revisions read as follows:

§ 63.1363 Standards for equipment leaks.

* * * * *

(b) * * * The owner or operator shall comply with the provisions of subpart H of this part as specified in paragraphs (b)(1) through (3) of this section and with paragraph (b)(4) of this section for pressure relief device monitoring. * * *

* * * * *

(4) *Requirements for pressure relief devices.* For pressure relief devices, the owner or operator must meet the requirements of this paragraph. Any release to the atmosphere from a pressure relief device in organic HAP service constitutes a violation of this rule. The owner or operator must install, maintain, and operate release indicators as specified in paragraphs (b)(4)(i) and (ii) of this section unless the pressure relief routes to a closed vent system and control device designed and operated in accordance with the requirements of this subpart. For any pressure relief devices, the owner or operator must comply with the recordkeeping provisions in paragraph (g) of this section and the reporting provisions in this paragraph (h) of this section. For any release, the owner or operator must submit the report specified in paragraph (h)(4) of this section, as described in paragraph (b)(4)(iii) of this section.

(i) A release indicator must be properly installed on each pressure relief device in such a way that it will indicate when an emission release has occurred.

(ii) Each indicator must be equipped with an alert system that will notify an operator immediately and automatically when the pressure relief device is open. The alert must be located such that the signal is detected and recognized easily by an operator.

(iii) For any instance that the release indicator indicates that a pressure relief device is open, the owner or operator must notify the Administrator that a pressure release has occurred and submit to the Administrator the report specified in paragraph (h)(4) of this section. This report is required even if the owner or operators elects to follow the procedures specified in § 63.1360(k) to establish an affirmative defense.

* * * * *

(g) * * *

(4) * * *

(v) * * *

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures must be maintained at the plant site. Reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(h) * * *

(1) Each owner or operator of a source subject to this section shall submit the reports listed in paragraphs (h)(1)(i) through (iii) of this section.

(i) A Notification of Compliance Status report described in paragraph (h)(2) of this section.

* * * * *

(iii) A pressure relief device deviation report described in paragraph (h)(4) of this section.

* * * * *

(4) *Pressure relief device deviation report.* If any pressure relief device in organic HAP service or any piece of equipment or closed vent system has discharged to the atmosphere as specified in paragraph (b)(4) of this section, the owner or operator must submit to the Administrator in the next Periodic Report:

(i) The source, nature, and cause of the discharge.

(ii) The date, time, and duration of the discharge.

(iii) An estimate of the quantity of total organic HAP emitted during the discharge and the method used for determining this quantity.

(iv) The actions taken to prevent this discharge.

(v) The measures adopted to prevent future such discharges.

18. Section 63.1365 is amended by:

a. Revising paragraph (b) introductory text;

b. Removing and reserving paragraph (h)(3).

The revision reads as follows:

§ 63.1365 Test methods and initial compliance procedures.

* * * * *

(b) *Test methods and conditions.* When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (b)(1) through (9) of this section shall be used. Compliance and performance tests shall be performed under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested and as specified in paragraphs (b)(10) and (11) of this section. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

§ 63.1366 [Amended]

19. Section 63.1366 is amended by removing and reserving paragraph (b)(8)(iv).

20. Section 63.1367 is amended by revising paragraph (a)(3) to read as follows:

§ 63.1367 Recordkeeping requirements.

(a) * * *

(3) *Records of malfunctions.* (i) The owner or operator of an affected source subject to this subpart shall maintain records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment), air pollution control equipment, or monitoring equipment, and an estimate of the excess emissions released.

(ii) The owner or operator shall maintain records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1360(e)(4), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

21. Section 63.1368 is amended by:

a. Revising paragraph (i);

b. Adding paragraph (p).

The revisions and addition read as follows:

§ 63.1368 Reporting requirements.

* * * * *

(i) *Reports of malfunctions.* For the purposes of this subpart, reports of malfunctions shall be submitted on the same schedule as the Periodic reports required under paragraph (g) of this section instead of the schedule specified in § 63.10(d)(5)(i) of subpart A of this part. If a malfunction occurred during the reporting period, the report must include the number, duration, excess emissions estimate, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1360(e)(4), including actions taken to correct a malfunction.

* * * * *

(p) *Electronic reporting.* (1) Within 60 days after the date of completing each performance test (defined in § 63.2) as required in this subpart, the owner or operator must transmit the results of the performance tests required by this subpart to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX) (see *http://www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/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 EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority.

(2) All reports required by this subpart not subject to the requirements in this paragraph (p) must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to this paragraph (p) in paper format.

22. Table 1 to subpart MMM of part 63 is amended by:

a. Removing entry 63.6(e);

b. Adding entries 63.6(e)(1)(i), 63.6(e)(1)(ii), 63.6(e)(1)(iii), and 63.6(e)(3);

c. Removing entry 63.6(f);

d. Adding entries 63.6(f)(1) and 63.6(f)(2)–(3);

e. Revising entry 63.7(e)(1);

f. Removing entry 63.8(b)(3)–(c)(3);

g. Adding entries 63.8(b)(3), 63.8(c)(1)(i), 63.8(c)(1)(ii), 63.8(c)(1)(iii), and 63.8(c)(2)–(3);

h. Revising entry 63.8(d)–(f)(3);

i. Removing entry 63.10(c);

j. Adding entries 63.10(c)(1)–(8), 63.10(c)(10)–(11), 63.10(c)(12)–(14), and 63.10(c)(15);

k. Revising entry 63.10(d)(5).

The revisions and additions read as follows:

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation
* * *	* * *	* * *
63.6(e)(1)(i)	No	See § 63.1360(e)(4) for general duty requirement.
§ 63.6(e)(1)(ii)	No.	

TABLE 1 TO SUBPART MMM OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM—Continued

Reference to subpart A	Applies to subpart MMM	Explanation
§ 63.6(e)(1)(iii)	Yes.	
§ 63.6(e)(3)	No.	
§ 63.6(f)(1)	No.	
§ 63.6(f)(2)–(3)	Yes.	
* * *	* * *	* * *
§ 63.7(e)(1)	No	See § 63.1365(b).
* * *	* * *	* * *
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)(i)	No.	
§ 63.8(c)(1)(ii)	Yes.	
§ 63.8(c)(1)(iii)	No.	
§ 63.8(c)(2)–(3)	Yes.	
* * *	* * *	* * *
§ 63.8(d)–(f)(3)	Yes	Except the last sentence of § 63.8(d)(3), which refers to an SSM plan. SSM plans are not required.
* * *	* * *	* * *
§ 63.10(c)(1)–(8)	Yes.	
§ 63.10(c)(10)–(11)	No	See § 63.1367(a)(3) for malfunction recordkeeping requirements.
§ 63.10(c)(12)–(14)	Yes.	
§ 63.10(c)(15)	No.	
* * *	* * *	* * *
§ 63.10(d)(5)	No	See § 63.1368(i) for malfunction reporting requirements.
* * *	* * *	* * *

* * * * *

Subpart PPP—[Amended]

23. Section 63.1420 is amended by:

a. Revising paragraphs (a)(4) introductory text and (a)(4)(iv);

b. Revising paragraphs (c)(1), (d) introductory text, and the heading for paragraph (e(8);

c. Revising paragraph (h) and;

d. Adding paragraph (i).

The revisions and addition read as follows:

§ 63.1420 Applicability and designation of affected sources.

(a) * * *

(4) The affected source also includes the emission points and components specified in paragraphs (a)(4)(i) through (vi) of this section that are associated with a PMPU (or a group of PMPUs) making up an affected source, as defined in § 63.1423.

* * * * *

(iv) Components required by or utilized as a method of compliance with this subpart which may include control techniques and recovery devices.

* * * * *

(c) * * *

(1) Components and equipment that do not contain organic HAP or that contain organic HAP as impurities only and are located at a PMPU that is part of an affected source.

* * * * *

(d) *Processes excluded from the affected source.* The processes specified in paragraphs (d)(1) through (3) of this section are not part of the affected source and are not subject to the requirements of both this subpart and subpart A of this part.

* * * * *

(e) * * *

(8) *Requirements for flexible process units that are not PMPU.* * * *

* * * * *

(h) *Applicability of this subpart.* (1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies.

(2) The emission limitations set forth in 40 CFR part 63, subpart H, as referred to in the equipment leak provisions in § 63.1434, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.1434 applies.

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment if the shutdown would contravene requirements applicable to such items of equipment.

(4) *General duty.* At all times, the owner or operator 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. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which 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.

(i) *Affirmative defense for exceedance of emission limit during malfunction.* In response to an action to enforce the standards set forth in this subpart, the owner or operator may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at § 63.2. Appropriate penalties may be assessed, however, if the owner or operator fails

to meet their burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, the owner or operator must timely meet the notification requirements in paragraph (i)(2) of this section, and must prove by a preponderance of evidence that:

(i) The excess emissions:

(A) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(vi) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* The owner or operator of the affected source experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (i)(1) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

24. Section 63.1423 is amended by:

a. Removing the phrase ''Start-up, shutdown, and malfunction plan (subpart F)'' in paragraph (a); and

b. Adding the term ''Affirmative defense'' in alphabetical order to paragraph (b) to read as follows:

§ 63.1423 Definitions.

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

25. Section 63.1430 is amended by revising paragraph (d)(2)(i) to read as follows:

§ 63.1430 Process vent reporting and recordkeeping requirements.

* * * * *

(d) * * *

(2) * * *

(i) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the daily averages. In addition, monitoring data recorded during periods of non-operation of the process (or specific portion thereof) resulting in cessation of organic HAP emissions shall not be included in computing the daily averages.

* * * * *

26. Section 63.1434 is amended by revising paragraphs (c) to read as follows:

§ 63.1434 Equipment leak provisions.

* * * * *

(c) *Requirements for pressure relief devices.* For pressure relief devices, the owner or operator must meet the requirements of this paragraph. Any release to the atmosphere from a pressure relief device in organic HAP service constitutes a violation of this rule. The owner or operator must install, maintain, and operate release indicators as specified in paragraphs (c)(1) and (2) of this section unless the pressure relief routes to a closed vent system and control device designed and operated in accordance with the requirements of this subpart. For any pressure relief devices, the owner or operator must comply with the recordkeeping and reporting provisions in § 63.1439(c) and (e)(9). For any release, the owner or operator must submit the report specified in § 63.1439(e)(9), as described in paragraph (c)(3) of this section.

(1) A release indicator must be properly installed on each pressure relief device in such a way that it will indicate when an emission release has occurred.

(2) Each indicator must be equipped with an alert system that will notify an operator immediately and automatically when the pressure relief device is open. The alert must be located such that the signal is detected and recognized easily by an operator.

(3) For any instance that the release indicator indicates that a pressure relief device is open, the owner or operator must notify the Administrator that a pressure release has occurred and submit to the Administrator the report specified in § 63.1439(e)(9). This report is required even if the owner or operator elects to follow the procedures specified in § 63.1420(k) to establish an affirmative defense.

* * * * *

27. Section 63.1437 is amended by revising paragraph (a) introductory text and the first sentence of (a)(1) introductory text to read as follows:

§ 63.1437 Additional requirements for performance testing.

(a) Performance testing shall be conducted in accordance with § 63.7(a)(1), (a)(3), (d), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (4) of this section and the additions specified in paragraph (b) of this section. Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(1) Performance tests shall be conducted according to the general provisions' performance testing requirements in § 63.7(e)(2), except that for all emission sources except process vents from batch unit operations, performance tests shall be conducted during maximum representative operating conditions for the process achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) or (iii) of this section to occur. * * *

* * * * *

28. Section 63.1438 is amended by:

a. Revising paragraphs (e)(1) introductory text and (e)(2);

b. Removing and reserving paragraphs (f)(1)(v)(A) through (C), (f)(3)(ii)(B)(*1*) through (*3*), and (g).

The revisions read as follows:

§ 63.1438 Parameter monitoring levels and excursions.

(e) * * *

(1) Each excursion, as defined in paragraphs (f)(1)(i), (f)(2)(i)(A), (f)(2)(ii), (f)(3)(i), and (f)(4) of this section, constitutes a violation of the provisions of this subpart in accordance with paragraph (e)(1)(i), (ii), or (iii) of this section.

* * * * *

(2) Each excursion, as defined in paragraphs (f)(1)(ii), (f)(1)(iii), (f)(2)(i)(B), and (f)(3)(ii) of this section constitutes a violation of the operating limit.

* * * * *

29. Section 63.1439 is amended by:

a. Revising paragraph (b)(1);

b. Removing and reserving paragraphs (d)(7)(ii) through (iv);

c. Revising paragraphs (e) introductory text, (e)(4)introductory text, and (e)(4)(v);

d. Removing and reserving paragraph (e)(4)(vi);

e. Revising paragraph (e)(4)(vii)(B);

f. Revising paragraphs (e)(6)(iii)(E), (e)(6)(viii)(A)(*1*), and (e)(6)(viii)(D);

g. Adding paragraphs (e)(9) and (10);

h. Revising the first sentence of paragraph (h)(1)(i);

i. Removing and reserving paragraph (h)(1)(ii)(C);

j. Revising paragraph (h)(1)(iii); and

k. Revising paragraph (h)(2)(iii) and (iv).

The additions and revisions read as follows:

§ 63.1439 General recordkeeping and reporting provisions.

* * * * *

(b) * * *

(1) *Malfunction recordkeeping and reporting.* (i) *Records of malfunctions.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) and (B) of this section.

(A) Records of the occurrence and duration of each malfunction of operation of process equipment or combustion, recovery, or recapture devices or continuous monitoring systems used to comply with this subpart, and an estimate of the excess emissions released.

(B) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1420(h)(4), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

(ii) *Reports of malfunctions.* For the purposes of this subpart, reports of malfunctions shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section. If a malfunction occurred during the reporting period, the report must include the number, duration, excess emissions estimate, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1420(h)(4), including actions taken to correct a malfunction.

* * * * *

(e) *Reporting and notification.* In addition to the reports and notifications required by 40 CFR part 63, subpart A, as specified in this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (10) of this section, as applicable. All reports required by this subpart, and the schedule for their submittal, are listed in Table 8 of this subpart.

* * * * *

(4) *Precompliance Report.* The owner or operator of an affected source requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; or requesting approval to establish parameter monitoring levels according to the procedures contained in § 63.1438(c) or (d) shall submit a Precompliance Report according to the schedule described in paragraph (e)(4)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(4)(ii) through (viii) of this section, as appropriate.

* * * * *

(v) The owner or operator shall report the intent to use an alternative emissions standard to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem an alternative emissions standard to be equivalent to the standard required by the subpart, under the procedures outlined in the General Provisions' requirements for use of an alternative nonopacity emission standard, in § 63.6(g).

* * * * *

(vii) * * *

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(4)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(4)(iv) of this section; or to use alternative controls, as specified in paragraph (e)(4)(v) of this section.

* * * * *

(6) * * *

(iii) * * *

(E) The information in paragraph (b)(1)(ii) of this section for reports of malfunctions.

* * * * *

(viii) * * *

(A) * * *

(*1*) A combustion, recovery, or recapture device for a particular emission point or process section has one or more excursions, as defined in § 63.1438(f) for a semiannual reporting period; or

* * * * *

(D) After quarterly reports have been submitted for an emission point for 1 year without one or more excursions

occurring (during that year), the owner or operator may return to semiannual reporting for the emission point or process section

* * * * *

(9) *Pressure relief device deviation report.* If any pressure relief device in organic HAP service or any piece of equipment or closed vent system has discharged to the atmosphere as specified in § 63.1434(c), the owner or operator must submit to the Administrator in the next Periodic Report:

(i) The source, nature, and cause of the discharge.

(ii) The date, time, and duration of the discharge.

(iii) An estimate of the quantity of total organic HAP emitted during the discharge and the method used for determining this quantity.

(iv) The actions taken to prevent this discharge.

(v) The measures adopted to prevent future such discharges.

(10) *Electronic reporting.* (i) Within 60 days after the date of completing each performance test (defined in § 63.2) as required in this subpart, the owner or operator must transmit the results of the performance tests required by this subpart to EPA's WebFIRE database by using the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through EPA's Central Data Exchange (CDX) (see *http://www.epa.gov/cdx*). Performance test data must be submitted in the file format generated through use of EPA's Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/index.html*). Only data collected using test methods on the ERT Web site are subject to this requirement for submitting reports electronically to WebFIRE. Owners or operators who claim that some of the information being submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAPQS/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 EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority.

(ii) All reports required by this subpart not subject to the requirements in paragraph (e)(10) of this section must be sent to the Administrator at the appropriate address listed in § 63.13. The Administrator or the delegated authority may request a report in any form suitable for the specific case (*e.g.,* by commonly used electronic media such as Excel spreadsheet, on CD or hard copy). The Administrator retains the right to require submittal of reports subject to paragraph (e)(10)(i) and (ii) of this section in paper format.

* * * * *

(h) * * *

(1) * * *

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation (*e.g.,* a temperature reading of − 200 °C on a boiler), and will alert the operator by alarm or other means. * * *

* * * * *

(iii) The monitoring system is capable of detecting unchanging data during periods of operation, except in circumstances where the presence of unchanging data are the expected operating condition based on past experience (*e.g.,* pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(2) * * *

(iii) The owner or operator shall retain the records specified in paragraph (h)(1) of this section, for the duration specified in this paragraph (h). For any calendar week, if compliance with paragraphs (h)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation.

(iv) For the purposes of this paragraph (h), an excursion means that the daily average of monitoring data for a parameter is greater than the maximum, or less than the minimum established value.

30. Table 1 to Subpart PPP of part 63 is amended by:

a. Revising entries 63.6(e)(1)(i) and 63.6(e)(1)(ii);

b. Adding entry 63.6(e)(3);

c. Removing entries 63.6(e)(3)(i) through 63.6(e)(3)(ix);

d. Revising entries 63.6(f)(1), 63.7(e)(1), 63.8(c)(1)(i), 63.8(c)(1)(iii), and 63.10(d)(5);

e. Removing entries 63.10(d)(5)(i) and 63.10(d)(5)(ii).

The revisions and addition read as follows:

TABLE 1 OF SUBPART PPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

Reference	Applies to subpart PPP	Explanation
* *	* *	* * *
63.6(e)(1)(i)	No	See § 63.1420(h)(4) for general duty requirement.
63.6(e)(1)(ii)	No.	
* *	* *	* * *
63.6(e)(3)	No.	
63.6(f)(1)	No.	
* *	* *	* * *
63.7(e)(1)	No	See §§ 63.1436(h) and 63.1437(a).
* *	* *	* * *
63.8(c)(1)(i)	No.	
* *	* *	* * *
63.8(c)(1)(iii)	No.	

TABLE 1 OF SUBPART PPP OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

Reference	Applies to subpart PPP	Explanation
* * *	* * *	* * *
63.10(d)(5)	No.	
* * *	* * *	* * *

31. Table 2 to Subpart PPP of part 63 is amended by revising the title to read as follows:

Table 2 of Subpart PPP of Part 63—Applicability of HON Provisions to Subpart PPP Affected Sources

* * * * *

[FR Doc. 2011–32934 Filed 1–6–12; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2010–0133; FRL–9614–4]

RIN 2060–AQ76

Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act Section 211(o), the Environmental Protection Agency is required to set the renewable fuel standards each November for the following year. In general the standards are designed to ensure that the applicable volumes of renewable fuel specified in the statue are used. However, the statute specifies that EPA is to project the volume of cellulosic biofuel production for the upcoming year and must base the cellulosic biofuel standard on that projected volume if it is less than the applicable volume set forth in the Act. EPA is today finalizing a projected cellulosic biofuel volume for 2012 and annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that will apply to all gasoline and diesel produced or imported for domestic use in year 2012. In the NPRM we also proposed an applicable volume of 1.28 billion gallons for biomass-based diesel for 2013. The statute specifies that the minimum volume of biomass-based diesel for years 2013 and beyond must be at least 1.0 billion gallons. We are continuing to evaluate the many comments on the NPRM from stakeholders, and will issue a final rule setting the applicable biomass-based diesel volume for calendar year 2013 as expeditiously as practicable. This action also presents a number of changes to the RFS2 regulations that are designed to clarify existing provisions and to address several unique circumstances that have come to light since the RFS2 program became effective on July 1, 2010. Finally, today's rule also makes a minor amendment to the gasoline benzene regulations regarding inclusion of transferred blendstocks in a refinery's early benzene credit generation calculations.

DATES: This final rule is effective on January 9, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0133. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; Telephone number: (734) 214–4131; Fax number: (734) 214–4816; Email address: *macallister.julia@epa.gov,* or Assessment and Standards Division Hotline; telephone number (734) 214–4636; Email address *OTAQPUBLICWEB@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final action. This table lists the types of entities that EPA is now aware could potentially be regulated by this final action. Other types of entities not listed in the table could also be regulated. To determine whether your activities will be regulated by this final action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this final action to a particular entity, consult the person listed in the preceding section.

Outline of This Preamble

I. Executive Summary
A. Standards for 2012
1. Assessment of 2012 Cellulosic Biofuel Volume
2. Advanced Biofuel and Total Renewable Fuel in 2012
3. Percentage Standards for 2012
4. Historical Renewable Fuel Production
B. Regulatory Changes
C. 2012 Price for Cellulosic Biofuel Waiver Credits
D. Assessment of the Domestic Aggregate Compliance Approach
E. Assessment of the Canadian Aggregate Compliance Approach
II. Projection of Cellulosic Volume and Assessment of Biomass-Based Diesel and Advanced Biofuel for 2012
A. Statutory Requirements
B. Cellulosic Biofuel Volume Assessment
1. Existing Cellulosic Biofuel Facilities
2. Potential New Facilities in 2012
3. Imports of Cellulosic Biofuel
4. Projections From the Energy Information Administration
5. Comments on the Proposed Rule
6. Summary of Volume Projections
C. Advanced Biofuel and Total Renewable Fuel in 2012
D. Biomass-Based Diesel in 2012

III. Final Percentage Standards for 2012
A. Background
B. Calculation of Standards
1. How are the standards calculated?
2. Small Refineries and Small Refiners
3. Final Percentage Standards
IV. Changes to RFS2 Regulations
A. Summary of Amendments
B. Technical Justification for Equivalence Value Application
C. Changes to Definitions of Terms
1. Definition of Annual Cover Crop
2. Definition of ''Naphtha''
D. Technical Amendments Related to RIN Generation and Separation
1. RIN Separation Limit for Obligated Parties
2. RIN Retirement Provision for Error Correction
3. Production Outlook Reports Submission Deadline
4. Attest Procedures
E. Technical Amendments Related to Registration & Recordkeeping
1. Construction Discontinuance & Completion Documentation
2. Third-Party Engineering Reviews
3. Foreign Ethanol Producers
F. Additional Amendments and Clarifications
1. Third-Party Engineering Review Addendum
2. RIN Generation for Fuel Imported From a Registered Foreign Producer
3. Bond Posting
4. Prohibition Against Repeat Generation of RINs
5. Acceptance of Separated Yard Waste and Food Waste Separation Plans
6. Transferred Blendstocks in Early Benzene Credit Generation Calculations
V. Annual Administrative Announcements
A. 2011 Price for Cellulosic Biofuel Waiver Credits
B. Assessment of the Domestic Aggregate Compliance Approach
C. Assessment of the Canadian Aggregate Compliance Approach
VI. Comments Outside the Scope of This Rulemaking
VII. Public Participation
VIII. Statutory And Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
IX. Statutory Authority

I. Executive Summary

The Renewable Fuel Standard (RFS) program began in 2006 pursuant to the requirements in Clean Air Act (CAA) section 211(o) which were added through the Energy Policy Act of 2005 (EPAct). The statutory requirements for the RFS program were subsequently modified through the Energy Independence and Security Act of 2007 (EISA), resulting in the promulgation of revised regulatory requirements on March 26, 2010.[1] The transition from the RFS1 requirements of EPAct to the RFS2 requirements of EISA generally occurred on July 1, 2010.

Under RFS2, EPA is required to determine and publish the applicable annual percentage standards for each compliance year by November 30 of the previous year. As part of this effort, EPA must determine the projected volume of cellulosic biofuel production for the following year. If the projected volume of cellulosic biofuel production is less than the applicable volume specified in section 211(o)(2)(B)(i)(III) of the statute, EPA must lower the applicable volume used to set the annual cellulosic biofuel percentage standard to the projected volume of production. When we lower the applicable volume of cellulosic biofuel in this manner, we are also authorized to lower the applicable volumes of advanced biofuel and/or total renewable fuel by the same or a lesser amount. Since these evaluations are based on evolving information about emerging segments of the biofuels industry, and may result in the applicable volumes differing from those in the statute, we believe that it is appropriate to establish the applicable volumes through a notice-and-comment rulemaking process. Today's notice provides our final evaluation of the projected production of cellulosic biofuel for 2012, our evaluation of whether to lower the applicable volumes of advanced biofuel and total renewable fuel, and the final percentage standards for compliance year 2012. We are finalizing a cellulosic biofuel requirement of 10.45 mill ethanol-equivalent gallons for 2012, and are not reducing the advanced biofuel or total renewable fuel requirements below the levels specified in the statute. For future years, EPA will continue to evaluate whether it is appropriate to adjust the volume of advanced and total renewable fuel, if EPA adjusts the volume of cellulosic biofuel. In making such determinations, EPA will consider all relevant factors. The evaluations that led to these 2012 volume requirements were based on our evaluation of individual producers' production plans and progress, a consideration of comments received in response to our notice of proposed rulemaking published on July 1, 2011,[2] the estimate of projected biofuel volumes that the Energy Information Administration (EIA) is required to provide to EPA by October 31, and other information that became available.

Today's final rule does not include an assessment of the environmental impacts of the percentage standards we are setting for 2012. All of the impacts of the RFS2 program were addressed in the RFS2 final rule published on March 26, 2010, including impacts of the biofuel standards specified in the statute. Today's rulemaking simply sets the standards for 2012 whose impacts were already analyzed previously.

Today's notice also finalizes a number of changes to the RFS2 regulations. These changes are designed to reduce confusion among regulated parties and streamline implementation by clarifying certain terms and phrases and addressing unique circumstances that came to light after the RFS2 program went into effect on July 1, 2010. Additionally, this notice also makes a minor amendment to the gasoline benzene regulations regarding inclusion of transferred blendstocks in a refinery's early benzene credit generation calculations. Further discussion of all of these changes can be found in Section IV.

Finally, in today's rulemaking we are announcing the price for cellulosic biofuel waiver credits that will be available for compliance with the 2012 cellulosic biofuel requirement, and are also announcing the results of our annual assessment of the aggregate compliance approach for U.S. crops and crop residue. These announcements are provided in Section V.

EPA is required to determine the applicable volume of biomass-based diesel (BBD) that will be required in 2013 and beyond based on consideration of a variety of factors, and promulgate regulations establishing the volumes. The statute specifies that the volume of biomass-based diesel for years 2013 and beyond must be at least 1 billion gallons. In the NPRM we proposed an applicable volume of 1.28 bill gallons for BBD for 2013. We are continuing to evaluate the many comments on the NPRM from stakeholders as well as fulfilling other analytical requirements. In determining

[1] 75 FR 14670.

[2] 76 FR 38844.

the BBD applicable volume, the statute requires an analysis of the impact of the BBD volume on a variety of factors such as the impact of BBD on energy security, transportation fuel costs, job creation, water quality, and other factors. EPA intends to gather additional information to enhance our analysis of these factors including consideration of costs and benefits consistent with the provisions of E.O. 13563, to ensure an appropriately balanced decision. For these reasons, we are not finalizing an applicable volume for 2013 BBD in today's rulemaking. We recognize that the statute calls for EPA to promulgate the applicable volume of BBD for 2013 no later than 14 months before that year. We do intend to issue a final determination setting the applicable BBD volume for calendar year 2013 as expeditiously as practicable.

A. Standards for 2012

1. Assessment of 2012 Cellulosic Biofuel Volume

To estimate the volume of cellulosic biofuel that can be made available in the U.S. in 2012, we researched all potential production sources by company and facility. This included sources that were still in the planning stages, those that were under construction, and those that are already producing some volume of cellulosic ethanol, cellulosic diesel, or some other type of cellulosic biofuel. Facilities primarily focused on research and development work with no intention of marketing any fuel produced were not considered for this assessment. From this universe of potential cellulosic biofuel sources we identified the subset that had a possibility of producing some volume of qualifying cellulosic biofuel for use as transportation fuel in 2012.

In today's final rule we specify the projected available volume for 2012 that forms the basis for the percentage standard for cellulosic biofuel. To arrive at this final volume, we took into consideration additional factors such as the current and expected state of funding, the status of the technology, progress towards construction and production goals, and other significant factors that could potentially impact fuel production or the ability of the produced fuel to generate cellulosic Renewable Identification Numbers (RINs). We also considered projections of cellulosic biofuel provided by the EIA. Further discussion of these factors can be found in Section II.B.

In our assessment we focused on domestic sources of cellulosic biofuel. While imports of cellulosic biofuels are possible and could be eligible to generate RINs, we believe this is unlikely due to local demand for cellulosic biofuels in the countries in which they are produced as well as the cost associated with transporting these fuels to the U.S. Of the domestic sources, we estimated that six facilities can make volumes of cellulosic biofuel available for transportation use in the U.S. in 2012. These facilities are listed in Table I.A.1–1 along with our estimate of the projected 2012 volume for each.

TABLE I.A.1–1—PROJECTED AVAILABLE CELLULOSIC BIOFUEL PLANT VOLUMES FOR 2012

Company	Location	Fuel type	Projected available volume (million ethanol-equivalent gallons)
American Process Inc	Alpena, MI	Ethanol	0.5
Fiberight	Blairstown, IA	Ethanol	2.0
INEOS Bio	Vero Beach, FL	Ethanol	3.0
KiOR	Columbus, MS	Gasoline, Diesel	4.8
KL Energy Corp	Upton, WY	Ethanol	0.1
ZeaChem	Boardman, OR	Ethanol	0.05
Total			10.45

Each of the facilities listed in the Table I.A.1–1 are at different points in their progress towards the production of commercial volumes of cellulosic biofuel. KL Energy Corp. is the only facility in the United States currently generating cellulosic biofuel RINs. American Process Inc., Fiberight, and ZeaChem all anticipate completing construction on their production facilities in late 2011 or early 2012 and plan to begin producing biofuel soon after their facilities are complete. INEOS Bio and KiOR are targeting April 2012 and mid 2012 for the start-up of their respective cellulosic biofuel production facilities. The variation in these expected start-up times, along with the facility production capacities, company production plans, and a variety of other factors have all been taken into account in projecting the available volume of cellulosic biofuel from each these facilities.

2. Advanced Biofuel and Total Renewable Fuel in 2012

The statute indicates that we may reduce the applicable volume of advanced biofuel and total renewable fuel if we determine that the projected volume of cellulosic biofuel production for 2012 falls short of the statutory volume of 500 million gallons. As shown in Table I.A.1–1, we have determined that this is the case. Therefore, we also must evaluate the need to lower the applicable volumes for advanced biofuel and total renewable fuel.

To address the need to lower the advanced biofuel standard, we first consider whether it appears likely that the biomass-based diesel volume of 1.0 billion gallons specified in the statute can be met in 2012. As discussed in Section II.E, we believe that the 1.0 billion gallon standard can indeed be met. Since biodiesel has an Equivalence Value of 1.5, 1.0 billion physical gallons of biodiesel would provide 1.5 billion ethanol-equivalent gallons that can be counted towards the advanced biofuel standard of 2.0 billion gallons. Of the remaining 0.5 bill gallons, 10.45 mill gallons will be met with cellulosic biofuel. Based on our analysis as described in Section II.C, we believe that there will be sufficient volumes of other advanced biofuels, such as imported sugarcane ethanol, additional biodiesel, or renewable diesel, such that the applicable volume for advanced biofuel can remain at the statutory level of 2.0 billion gallons. In addition, as discussed in Section II.C, we believe there will be sufficient volumes to satisfy the 15.2 billion gallon applicable

volume of total renewable fuel specified in the Act, so the 2012 total renewable fuel percentage standard is based on that volume.

3. Percentage Standards for 2012

The renewable fuel standards are expressed as a volume percentage, and are used by each refiner, blender or importer to determine their renewable fuel volume obligations. The applicable percentages are set so that if each regulated party meets the percentages, and if EIA projections of gasoline and diesel use are accurate, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel used will meet the volumes required on a nationwide basis.

To calculate the percentage standard for cellulosic biofuel for 2012, we have used the projected annual volume of 10.45 million ethanol-equivalent gallons (representing 8.65 million physical gallons). The applicable volumes for biomass-based diesel, advanced biofuel, and total renewable fuel for 2012 will be those specified in the statute. These volumes are shown in Table I.A.3–1.

TABLE I.A.3–1—FINAL VOLUMES FOR 2012

	Actual volume	Ethanol equivalent volume [a]
Cellulosic biofuel	8.65 mill gal	10.45 mill gal.
Biomass-based diesel	1.0 bill gal	1.5 bill gal.
Advanced biofuel	1.3–1.5 [b] bill gal	2.0 bill gal.
Renewable fuel	14.5–14.7 [b] bill gal	15.2 bill gal.

[a] Biodiesel and cellulosic diesel have equivalence values of 1.5 and 1.7 ethanol equivalent gallons respectively. As a result, ethanol-equivalent volumes are larger than actual volumes for cellulosic biofuel and biomass-based diesel.
[b] Range depends on the equivalence values of advanced biofuels other than cellulosic biofuel and biomass-based diesel.

Four separate standards are required under the RFS2 program, corresponding to the four separate volume requirements shown in Table I.A.3–1. The specific formulas we use to calculate the renewable fuel percentage standards are contained in the regulations at § 80.1405 and repeated in Section III.B.1. The percentage standards represent the ratio of renewable fuel volume to projected non-renewable gasoline and diesel volume. The projected volume of transportation gasoline and diesel used to calculate the standards in today's final rule was provided by EIA.[3]

In March 2011, DOE evaluated the impacts of the RFS program on small entities and concluded that some small refineries would suffer a disproportionate economic hardship if required to participate in the program.[4] As a result, we are required to exempt these few refineries from being obligated parties for a minimum of two years (2011 and 2012), and must also exempt their gasoline and diesel volumes from the calculation of the annual percentage standards. In addition, EPA has approved a number of individual small refinery petitions submitted pursuant to 40 CFR § 80.1441(e)(2) since publication of the proposed rule, and has also adjusted the final 2012 percentage standards to reflect the exemption of these small refineries from being RFS obligated parties in 2012. The final standards for 2012 are shown in Table I.A.3–2 and include the adjustment for exempt small refineries (which constitute about 3.6% of the gasoline pool and 4.5% of the diesel pool). Detailed calculations can be found in Section III.

TABLE I.A.3–2—FINAL PERCENTAGE STANDARDS FOR 2012

Cellulosic biofuel	0.006%
Biomass-based diesel	0.91
Advanced biofuel	1.21
Renewable fuel	9.23

4. Historical Renewable Fuel Production

To provide a comparison to the 2012 volume requirements shown in Table I.A.3–1, we determined the actual annual production volumes for the four RFS categories of renewable fuel. Since data on 2011 production is currently incomplete, we have shown the production volumes for the full year beginning in July 2010 and ending in June 2011. July 2010 also marks the start of the RFS2 program when data collection began with the EPA-Moderated Transaction System (EMTS) on production of renewable fuel and generation of RINs.

TABLE I.A.4–1—PRODUCTION OF RENEWABLE FUEL FROM JULY 2010–JUNE 2011 [a]

	Actual volume	Ethanol equivalent volume [a]
Cellulosic biofuel	0 mill gal	0 mill gal.
Biomass-based diesel	0.43 [b] bill gal	0.64 [b] bill gal.
Advanced biofuel	0.47 bill gal	0.70 bill gal.
Renewable fuel	14.05 bill gal	14.29 bill gal.

[a] Except for biomass-based diesel, data derived from the EPA-Moderated Transaction System (EMTS) at *http://www.epa.gov/otaq/fuels/rfsdata/index.htm.*
[b] Due to ongoing investigations of biodiesel RIN generation, these values have been derived from Census Bureau data on fats and oils at *http://www.census.gov/manufacturing/cir/historical_data/m311k/index.html.*

[3] Letter from Howard K. Gruenspecht, Acting Administrator, Energy Information Administration, to Lisa P. Jackson, Administrator, EPA. October 19, 2011.

[4] "Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship," U.S. Department of Energy, March 2011.

B. Regulatory Changes

In today's action we are also finalizing a number of changes to the RFS2 regulations. These changes are intended to:

- Clarify certain provisions because we have learned that there is some confusion among some regulated parties
- Clarify the application of certain provisions to unique circumstances
- Provide greater specificity in the definition of certain terms
- Correct regulatory language that inadvertently misrepresented our intent

Today's rule also makes a minor amendment to the gasoline benzene regulations regarding inclusion of transferred blendstocks in a refinery's early benzene credit generation calculations. A detailed discussion of these regulatory changes is provided in Section IV.

C. 2012 Price for Cellulosic Biofuel Waiver Credits

Since we are reducing the required volume of cellulosic biofuel for 2012 below the applicable volume specified in the statute, EPA is required to offer biofuel waiver credits to obligated parties that can be purchased in lieu of acquiring cellulosic biofuel RINs.[5] These waiver credits are not allowed to be traded or banked for future use, are only allowed to be used to meet the 2012 cellulosic biofuel standard, and cannot be applied to deficits carried over from 2011. Moreover, unlike cellulosic biofuel RINs, waiver credits may not be used to meet either the advanced biofuel standard or the total renewable fuel standard. For the 2012 compliance period, we are making cellulosic biofuel waiver credits available to obligated parties for end-of-year compliance should they need them at a price of $0.78 per credit. Further discussion is provided in Section VI.A.

D. Assessment of the Domestic Aggregate Compliance Approach

As part of the RFS2 regulations, EPA established an aggregate compliance approach for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land. This compliance approach relieved such producers (and importers of such fuel) of the individual recordkeeping and reporting requirements otherwise required of producers and importers to verify that feedstocks used in the production of RIN-qualifying renewable fuel meet the definition of renewable biomass. EPA determined that 402 million acres of U.S. agricultural land was available in 2007 (the year of EISA enactment) for production of crops and crop residue that would meet the definition of renewable biomass, and determined that as long as this total number of acres is not exceeded, it is unlikely that new land has been devoted to crop production based on historical trends and economic considerations. We indicated that we would conduct an annual evaluation of total U.S. acreage that is cropland, pastureland, or conservation reserve program land, and that if the value exceed 402 million acres, producers using domestically-grown crops or crop residue to produce renewable fuel would be subject to individual recordkeeping and reporting to verify that their feedstocks meet the definition of renewable biomass.

The RFS2 regulations provide that EPA will make a finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year and will publish this finding in the **Federal Register** by November 30 of the same year. Based on data provided by the USDA, we have estimated that U.S. agricultural land reached 392 million acres in 2011, and thus did not exceed the 2007 baseline acreage.

We also stated in the preamble to the final RFS2 rule that if, at any point, EPA finds that the total agricultural land is greater than 397 million acres, EPA will conduct further investigations to evaluate validity of the domestic aggregate compliance approach. The total acreage estimate of 392 million acres does not exceed the trigger point for further investigation; therefore EPA does not plan to conduct further investigations into this matter. Additional discussion on this matter can be found in Section V.B of this preamble.

E. Assessment of the Canadian Aggregate Compliance Approach

On September 29, 2011, EPA approved the use of an aggregate compliance approach to renewable biomass verification for planted crops and crop residue grown in Canada. On March 15, 2011, EPA issued a notice of receipt of and solicited public comment on a petition for EPA to authorize the use of an aggregate approach for compliance with the Renewable Fuel Standard renewable biomass requirements, submitted by the Government of Canada. The petition requested that EPA determine that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from Canada meet the definition of renewable biomass.

The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and nonforested on that date (and is therefore RFS2 qualifying land). The total agricultural land in Canada in 2011 is estimated at 121 million acres. This data was presented to EPA in a report titled: *Changes to the Renewable Fuel Standard Program Aggregate Compliance for Canadian Crops and Crop Residues: Data Analysis and Justification Report 2011.* This report has been docketed at EPA–HQ–OAR–2010–0133. The total acreage estimate of 121 million acres does not exceed the trigger point for further investigation; therefore EPA does not plan to conduct further investigations into this matter. Additional discussion on this matter can be found in Section V.B of this preamble.

II. Projection of Cellulosic Volume and Assessment of Biomass-Based Diesel and Advanced Biofuel for 2012

In order to project production volume of cellulosic biofuel in 2012 for use in setting the percentage standard, we collected information on individual facilities that have the potential to produce qualifying volumes for consumption as transportation fuel, heating oil, or jet fuel in the U.S. in 2012. This section describes the projected available volume of cellulosic biofuel in 2012 as well as some of the uncertainties associated with those volumes. Section III describes the derivation of the percentage standards that will apply to obligated parties in 2012.

The 2012 volume projections in today's final rule were based on several sources of information:

- An estimate from EIA of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel that they project will be sold or introduced into commerce in the U.S. in 2012.
- Progress that the cellulosic biofuel industry is making in 2011
- Our own assessment of the cellulosic biofuel industry's projected volumes for 2012
- Comments in response to the NPRM

In addition to the sources of information listed above EPA had also intended to consider the Production Outlook Reports that are required under § 80.1449 for all registered renewable

[5] One waiver credit would apply to one gallon of an obligated party's cellulosic biofuel Renewable Volume Obligation (RVO).

fuel producers and importers. These Production Outlook Reports were not as useful as EPA had hoped in helping to provide information on the intentions of cellulosic biofuel producers in 2012 as very few had registered under the RFS program and they were thus not required to submit a report. EPA expects that in future years as more cellulosic biofuel producers register under the RFS program these reports will become of greater value in helping to determine the appropriate projected available volume of cellulosic biofuel.

In directing EPA to project cellulosic biofuel production for purposes of setting the annual cellulosic biofuel standard, Congress did not specify what degree of certainty should be reflected in the projections. However, in response to the NPRM, some commenters cited Executive Order 13563 which states that regulations must in general ''promote predictability and reduce uncertainty.'' We agree that this must be a goal in the process of determining the appropriate cellulosic biofuel requirement for 2012. The greatest certainty is achieved when the level of the standard is firmly established before it becomes applicable, and all regulated parties can have confidence regarding that standard. Doing this ensures that obligated parties know what their obligations will be so that they can begin efforts to meet those obligations, and biofuel producers know what baseline demand for their product will be so that they can secure financing and ramp up production with confidence.

In contrast to statements made by several obligated parties, meeting the dual goals of predictability and reducing uncertainty does not require EPA to specify an applicable volume for cellulosic biofuel that is as low as possible, or based only on demonstrated (as opposed to reasonably anticipated) production. Due to the availability of cellulosic waiver credits, obligated parties always have the means to comply with the cellulosic biofuel standard that we set,[6] and at a cost that is predictable. There is, therefore, no uncertainty with regard to the level of their obligations or the means available to achieve it.

Moreover, Executive Order 13563 also states that regulations must in general promote ''economic growth, innovation, competitiveness, and job creation,'' while ''taking into account benefits and costs, both quantitative and qualitative.'' While the cellulosic biofuel standard that we set should be within the range of what can be attained based on projected domestic production and import potential, the standard that we set helps drive the production of volumes that will be made available. This is consistent with comments submitted by the Biotechnology Industry Organization and the Renewable Fuels Association. Thus while any standard we set for cellulosic biofuel standard for 2012 will have some uncertainty in terms of actual attainment, our intention is to balance such uncertainty with the objective of promoting growth in the industry. Our final projected available volume of 8.65 million gallons of cellulosic biofuel (10.45 million ethanol-equivalent gallons) for 2012 reflects these considerations.

A. Statutory Requirements

The volumes of renewable fuel to be used under the RFS2 program each year (absent an adjustment or waiver by EPA) are specified in CAA 211(o)(2). These volumes for 2012 are shown in Table II.A–1.

TABLE II.A–1—REQUIRED VOLUMES IN THE CLEAN AIR ACT FOR 2012

[Bill gal]

	Actual volume	Ethanol equivalent volume
Cellulosic biofuel	[a] 0.5	0.5
Biomass-based diesel	1.0	1.5
Advanced biofuel	[a] 2.0	2.0
Renewable fuel	[a] 15.2	15.2

[a] These values assume that the biofuels would be ethanol. If any portion of the biofuels used to meet these applicable volumes has a volumetric energy content greater than that for ethanol, these values will be lower.

By November 30 of each year, the EPA is required under CAA 211(o) to determine and publish in the **Federal Register** the renewable fuel percentage standards for the following year. These standards are to be based in part on transportation fuel volumes estimated by the EIA for the following year. The calculation of the percentage standards is based on the formulas in § 80.1405(c) which express the required volumes of renewable fuel as a volume percentage of gasoline and diesel sold or introduced into commerce in the 48 contiguous states plus Hawaii.

The statute requires that if EPA determines that the projected volume of cellulosic biofuel production for the following year is less than the applicable volume shown in Table II.A–1, then EPA is to reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year. In addition, if EPA reduces the required volume of cellulosic biofuel below the level specified in the statute, the Act also indicates that we may reduce the applicable volume of advanced biofuels and total renewable fuel by the same or a lesser volume.

B. Cellulosic Biofuel Volume Assessment

In order to project cellulosic biofuel production for 2012, EPA has tracked the progress of over 100 biofuel production facilities. From this list of facilities we used publically available information, as well as information provided by DOE and USDA, to make a preliminary determination of which facilities are the most likely candidates to produce cellulosic biofuel and make it commercially available in 2012. Each of these companies was investigated further in order to determine the current status of their facilities and their likely cellulosic biofuel production volumes for the coming years. Information such as the funding status of these facilities, announced construction and production ramp up periods, and annual fuel production targets were taken into account. We also considered each company's history of meeting milestone targets and production goals where

[6] So long as the required volume is below the volume specified in the statute, such that cellulosic biofuel waiver credits are available.

applicable. Our projection of the volume of cellulosic biofuel production in 2012 is based on this information as well as our own assessment of the likelihood of these facilities successfully producing cellulosic biofuel in the volumes indicated. A brief description of each of the companies we believe can produce cellulosic biofuel and make it commercially available in 2012 can be found below.

1. Existing Cellulosic Biofuel Facilities

The rule that established the required 2011 cellulosic biofuel volume identified five production facilities that we projected would produce cellulosic biofuel and make the fuel commercially available in 2011. Each of these production facilities are now structurally complete, however they are in various stages of biofuel production. All of these facilities have either produced some volume of cellulosic biofuel in 2011, or are on schedule to do so later in the year. Only KL Energy and Range Fuels, however, have completed registration of cellulosic biofuel production facilities under the RFS2 program and as such they are currently the only facilities of the five listed here currently eligible to generate cellulosic biofuel RINs. For more background information on each of these facilities see the 2011 standards rule.[7]

DuPont Danisco Cellulosic Ethanol (DDCE) successfully started up their small demonstration facility in Vonore, Tennessee in late 2010. This facility has a maximum production capacity of 250,000 gallons of ethanol per year and uses an enzymatic hydrolysis process to convert corn cobs into ethanol. In conversations with EPA in July 2011 DDCE indicated that this facility was currently producing ethanol at approximately half the nameplate capacity, corresponding to a volume of 125,000 gallons per year. The focus of this facility, however, remains gathering information to help successfully design and operate DDCE's first commercial scale facility. All the cellulosic ethanol currently produced at this facility is used for testing purposes or given away. No RINs are currently generated for this ethanol and it is not available for purchase by obligated parties. DDCE has indicated that they have no plans to generate RINs or sell ethanol produced at their facility in Vonore in 2012. No volume of cellulosic ethanol has therefore been included in the projections of available cellulosic biofuel for 2012.

Fiberight uses an enzymatic hydrolysis process to convert the biogenic portion of separated municipal solid waste (MSW) into ethanol. Construction on the first stage of Fiberight's Blairstown, Iowa facility was completed in the summer of 2010. The production capacity of the first stage of this project is 2 million gallons of ethanol per year. Fiberight had planned to begin production of cellulosic biofuel from this facility in late 2010 but poor economic conditions, due in part to low cellulosic RIN values in 2010, caused them to postpone fuel production. Fiberight had also planned to begin construction on an expansion of this facility in late 2010 that would increase the production potential to 6 million gallons of ethanol per year, but were unable to secure funding to carry out the construction as planned. They have since secured funding and began construction on the expansion of their Blairstown facility in April 2011. Fiberight anticipates that they will begin fuel production in early 2012 and will ramp up production at this facility throughout 2012. EPA projects the production of 2 million gallons of cellulosic ethanol from this facility in 2012.

KiOR continues to produce a small volume of renewable crude from agricultural residue at their demonstration facility in Houston, Texas using a technology they call Biomass Catalytic Cracking (BCC). This technology uses heat and a proprietary catalyst to convert biomass to a renewable crude with a relatively low oxygen content. The renewable crude is then upgraded to produce renewable gasoline and diesel, as well as a small quantity of fuel oil. While KiOR plans to continue to operate their Houston facility in 2012 its main purpose will be to provide small quantities of fuel for testing purposes and to provide data for the optimization of KiOR's first commercial facility. In conversations with EPA KiOR has indicated that it is unlikely that any significant volume of fuel from this facility will be sold commercially. EPA has therefore not included any volume from KiOR's Houston facility in our projected available volumes for 2012.

KL Energy has developed a process to convert cellulose and hemicellulose into cellulosic sugars using a thermal-mechanical pretreatment process followed by an enzymatic hydrolysis. It had initially planned to used woody biomass as their feedstock for cellulosic biofuel production; however its production process is versatile enough to allow for a wide variety of cellulosic feedstocks to be used. In August 2010 KL Energy announced a joint development agreement with Petrobras America Inc. As part of the agreement Petrobras has invested $11 million to modify KL Energy's facility in Upton, Wyoming to allow it to process bagasse and other waste products. If successful, Petrobras and KL Energy plan to work together to integrate the technology into currently existing ethanol production facilities in Brazil. The modifications to KL Energy's facility were completed earlier this year. KL Energy is currently producing small volumes of cellulosic ethanol and plans to continue to do so throughout 2012. In August 2011 KL Energy successfully registered its cellulosic biofuel production facility under the RFS program making it eligible to generate RINs for biofuel produced from this facility. KL Energy has indicated to EPA its intent to generate RINs for the fuel it produces and to sell it commercially in the United States. EPA projects that 100,000 gallons of cellulosic ethanol will be available from this facility in 2012.

Range Fuels began production of methanol at their Soperton, Georgia facility in the third quarter of 2010. This facility uses a thermochemical technology to produce syngas (consisting of mostly hydrogen and carbon monoxide) from a woody biomass feedstock. The syngas is then converted into fuel with the aid of a chemical catalyst developed by Range. Range has developed the capability to produce both methanol and ethanol, depending on the catalyst used. In January 2011, after producing a small volume of ethanol from this facility and proving this capability, Range Fuels shut down the Soperton facility in order to work through technical difficulties they had been experiencing. No timeline has been given for the restart of this facility and fuel production from this facility in 2012 appears unlikely. No cellulosic fuel production from Range Fuels has been included in EPA's 2012 projected available volume.

2. Potential New Facilities in 2012

In the proposed rule EPA discussed five new cellulosic biofuel production facilities that had plans to begin commercial production at some point in 2012. These facilities were at various stages in the construction process, and as such had various degrees of uncertainty associated with any projected 2012 commercial production. Three of these facilities, those being developed by INEOS Bio, KiOR, and ZeaChem, have made significant progress towards completion and are expected to produce and market cellulosic biofuel in 2012. Two of the companies mentioned in the proposed rule, Fulcrum Bioenergy and Terrabon,

[7] 75 FR 76790, December 9, 2010.

are no longer on a schedule to produce cellulosic biofuel in 2012. Finally, EPA has become aware of a sixth company, American Process Inc., which is developing a cellulosic biofuel project that is likely to produce and market some volume of cellulosic biofuel in 2012. The following section provides updated information on each of the companies discussed in the proposed rule, as well as a summary of the project being developed by American Process Inc.

Fulcrum Bioenergy is planning to build a facility capable of producing 10.5 million gallons of cellulosic ethanol and 16 megawatts of renewable electricity per year. It has developed a thermochemical technology to produce ethanol from separated MSW via syngas using a chemical catalyst. In November 2010 Fulcrum announced that it had received a term sheet for an $80 million loan guarantee from DOE and was entering into the final phase of the loan guarantee program. Prior to that Fulcrum had announced that it had signed long term feedstock supply contracts for this facility as well as engineering, procurement, and construction contracts. In January 2011 Fulcrum announced it had closed on a $75 million Series C financing that would provide the remaining necessary capital for the construction of its first commercial production facility pending the closing of its DOE loan guarantee. The loan guarantee, however, has yet to be finalized. As a result the start of the construction of this facility, originally planned for the second quarter of 2011, is now expected to begin in late 2011. EPA has not included any volume of cellulosic biofuel from Fulcrum Bioenergy's facility in our 2012 projected available volume because of this delay.

INEOS Bio has developed a process for producing cellulosic ethanol by first gasifying feedstock material into a syngas and then using naturally occurring bacteria to ferment the syngas into ethanol. In January 2011 USDA announced a $75 million loan guarantee for the construction of INEOS Bio's first commercial facility to be built in Vero Beach, Florida. This was in addition to the grant of up to $50 million INEOS Bio received from DOE in January 2010. This facility will be capable of producing 8 million gallons of cellulosic biofuel as well as 6 megawatts of renewable electricity from a variety of feedstocks including yard, agricultural, and wood waste, as well as separated MSW. On February 9, 2011 INEOS Bio broke ground on this facility. Since February significant progress has been made and INEOS Bio remains on target to complete construction on this facility in April 2012. Commercial production of cellulosic ethanol is expected to begin soon after construction is complete. Three million gallons of cellulosic ethanol from this facility has been included in EPA's projected available volume for 2012.

After successful operation of their demonstration plant in Houston, Texas KiOR began construction on its first commercial scale facility in May 2011. This facility, located in Columbus, Mississippi, will convert biomass to a low oxygen biocrude using a process KiOR calls Biomass Catalytic Cracking (BCC). BCC uses a catalyst developed by KiOR in a process similar to Fluid Catalytic Cracking currently used in the petroleum industry. KiOR's Columbus facility will also be capable of upgrading this biocrude into finished gasoline and diesel as well as a small quantity of fuel oil. KiOR plans to finish construction on this facility in the first half of 2012 and begin commercial production early in the third quarter of 2012. KiOR has also announced plans to construct several more commercial scale biofuel production facilities in Mississippi and across the southeastern United States. It is unlikely any of these additional facilities will begin production of biofuel in 2012. EPA has included 3 million gallons of cellulosic biofuel (4.8 million ethanol equivalent gallons) from KiOR's Columbus facility in our projected available volume for 2012.

Terrabon completed construction of a small demonstration scale facility for the conversion of MSW and other waste materials into gasoline in 2010 and are currently developing plans for their first commercial scale facility. Terrabon utilizes a unique production process that can be used to produce gasoline, diesel, or jet fuel. Feedstock is first fermented into carboxylic acids by a variety of micro organisms. These carboxylic acids are then neutralized to form carboxylate salts that are dewatered, dried, and thermally converted to ketones. Finally, the ketones are hydrogenated to form alcohols which can then be refined into gasoline, diesel, or jet fuel. Terrabon had hoped to begin producing cellulosic biofuel at their first commercial scale facility some time in 2012, however difficulties in securing the necessary funding have delayed the expected start up of their first commercial scale facility to 2013. EPA has not included any volume of cellulosic biofuel from Terrabon in our 2012 projected available volume.

ZeaChem has begun construction on a small demonstration scale facility in Boardman, Oregon capable of producing 250,000 gallons of cellulosic ethanol per year. Its production process uses a combination of biochemical and thermochemical technologies to produce ethanol and other renewable chemicals from cellulosic materials. The feedstock is first fractionated into two separate streams containing cellulosic sugars and lignin. The cellulosic sugars are fermented into ethyl acetate using a naturally occurring acetogen, which can then be hydrogenated into ethanol. The hydrogen necessary for this process is produced by gasifying the lignin stream from the cellulosic biomass. ZeaChem's process is flexible and is capable of producing a wide range of renewable chemical and fuel molecules in addition to ethanol. ZeaChem received a grant of up to $25 million from DOE in January 2010 for the construction of their demonstration facility. Since then ZeaChem has made significant progress on its demonstration facility and currently plans to begin production of cellulosic ethanol from this facility in early 2012. It has indicated to EPA, however, that it is highly unlikely to achieve full production capacity at this facility in its first year of production and has suggested that the production of 50,000 gallons of cellulosic ethanol from this facility in 2012 is a more realistic expectation. Despite this small volume, ZeaChem does intend to generate RINs for the fuel that they produce and to market it commercially. Based on this information EPA has included 0.05 million gallons of cellulosic ethanol in our projected available volume for 2012.

American Process Inc. (API) is developing a project in Alpena, Michigan capable of producing up to 900,000 gallons of cellulosic ethanol per year from woody biomass. This facility will use a technology developed by API called GreenPower+™. This technology extracts the hemicelluloses portion of woody biomass using hot water and hydrolyzes it into cellulosic sugars. These cellulosic sugars are then converted to ethanol or other alcohols, while the remaining portion of the woody biomass, containing mostly cellulose and lignin, is processed into wood paneling at a co-located facility. At larger scale facilities API anticipates burning the residual biomass in a boiler to produce renewable steam and electricity as well as cellulosic biofuel. In January 2010 API received a grant from DOE for up to $18 million for the construction of their demonstration facility. Construction of the Alpena, Michigan facility began in March 2011 and API anticipates beginning the production of cellulosic ethanol at this site early in 2012. API was not

discussed as a potential producer of cellulosic biofuels in 2012 in our proposed rule due to uncertainty about its ability to generate RINs with the intended feedstock and production process. EPA anticipates these issues will be resolved. Cellulosic biofuel produced at API's facility will therefore likely be eligible for cellulosic RINs. For our 2012 projected available volume of cellulosic biofuels we have included 500,000 gallons of cellulosic ethanol from this facility. This volume represents the low end of API's production target for that year due to the uncertainties associated with the start up of a new industrial facility utilizing a technology unproven at industrial scale.

Another potential source of cellulosic biofuel in 2012 is the application of a technology being developed by EdeniQ. EdeniQ is developing a suite of enzymes capable of breaking down cellulose into simple sugars that can then be fermented into ethanol. Rather than build its own production facilities EdeniQ plans to license its enzymes to existing corn ethanol facilities. Such licensing would be accompanied by the Cellunator, an advanced milling device EdeniQ has developed to reduce the particle size of corn kernels to enable greater conversion of starch to ethanol as well as the conversion of cellulose to simple sugars. EdeniQ claims that its technology would allow corn ethanol facilities to increase ethanol production by 1–2% by converting the cellulosic portion of the corn kernel into ethanol. EdeniQ is also working to increase the effectiveness of its enzymes in order to enable ethanol production increases of 3–4% from the cellulose in the corn kernel in the future. EdeniQ plans to begin commercial trials of its technology in the second half of 2011. This technology has the potential to be implemented rapidly and produce significant amounts of cellulosic ethanol in 2012 as it requires relatively small capital additions to already existing corn ethanol facilities. While this technology is promising, there is currently no pathway in the RFS2 regulations for the generation of cellulosic biofuel RINs using the cellulosic portion of the corn kernel as a feedstock. Moreover, EdeniQ has not announced any agreements with corn ethanol producers to install this technology to enable the production of cellulosic ethanol. For these reasons, EPA has not included any cellulosic ethanol production from EdeniQ's technology in our 2012 projections.

In addition to the facilities mentioned above, EPA is also aware of three companies planning to begin the production of cellulosic biofuels in early 2013. Coskata, Enerkem, and Poet are planning on completing construction on their first commercial scale cellulosic biofuel facilities in late 2012 or early 2013 and producing commercial volumes of biofuels in 2013. While all of these facilities continue to make progress towards commercial production of cellulosic biofuel in 2013 it is highly unlikely that any of these facilities will be capable of producing cellulosic biofuels by the end of 2012. EPA has therefore not included any volume of cellulosic biofuel from these facilities in our projected available volume for 2012. These facilities, along with several other commercial cellulosic biofuel facilities planning to begin production in 2013, notably the first commercial scale facilities from Abengoa and Mascoma, indicate that the potential exists for the rapid expansion of production volumes in future years.

3. Imports of Cellulosic Biofuel

While domestically produced cellulosic biofuels are the most likely source of cellulosic biofuel available in the United States, producers and/or importers of cellulosic biofuel produced in other countries may also generate RINs and participate in the RFS2 program. While the RFS2 program does provide a financial incentive for companies to import cellulosic biofuels into the United States, the combination of local demand, financial incentives from other governments, and transportation costs for the cellulosic biofuel has resulted in no cellulosic biofuel being imported to the United States thus far. EPA believes this situation is likely to continue in the near future. Additionally, the majority of internationally based cellulosic biofuel facilities that currently exist or plan to complete construction by the end of 2012 are small research and development or pilot facilities not designed for the commercial production of fuel.

Two notable exceptions, both located in Canada, are Enerkem and Iogen. Enerkem has a currently existing commercial production facility in Westbury, Quebec and is expecting to complete construction on a second facility in Edmonton, Alberta in late 2011. Iogen has a small demonstration facility in Ottawa and is currently exploring the possibility of building its first commercial facility near Prince Albert, Saskatchewan. The large expected production volumes and relatively small distance this fuel would have to be transported to reach the United States make these facilities the most likely candidates to import cellulosic biofuel into the United States. In conversations with EPA, however, both companies indicated that they had no current intentions of importing fuel from their Canadian production facilities into the United States. On September 1, 2010 the government of Canada finalized regulations requiring all gasoline sold in Canada to have a renewable content of 5% and all diesel fuel and heating oil to have a renewable content of 2%. These regulations will further increase local demand for any cellulosic biofuel produced from these two facilities and decrease the likelihood of any of this fuel being exported to the United States. For these reasons we have not included any cellulosic biofuel production from foreign facilities in our projections of cellulosic biofuel availability in 2012.

4. Projections From the Energy Information Administration

Section 211(o)(3)(A) of the Clean Air Act requires EIA to "* * * provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States." EIA provided these estimates to us on October 19, 2011.[8] With regard to cellulosic biofuel, the EIA estimated that the available volume in 2012 would be 6.9 million gallons based on its assessment of the utilization of production capacity. A summary of the commercial scale plants they considered and associated production volumes is shown below in Table II.B.4. In addition to the facilities listed in this table EIA also projects that three pilot-scale facilities, those owned by American Process (Alpena, MI), KL Process Design (Upton, WY) and ZeaChem (Boardman, OR) will produce an additional 0.2 million gallons of cellulosic biofuel and make it available for sale in the U.S. in 2012.

[8] Letter from Howard K. Gruenspecht, EIA Acting Administrator, to Lisa Jackson, EPA Administrator, October 19, 2011.

TABLE II.B.4—COMMERCIAL-SCALE CELLULOSIC BIOFUEL PLANTS EXPECTED TO GENERATE CELLULOSIC BIOFUEL RINS IN 2012

Year online	Company	Location	Product	Nameplate capacity (million gallons)	Projected utilization (%)	Projected production (million gallons)
2011/12	Fiberight, LLC	Blairstown, IA	Ethanol	6.4	25	1.6
2012	INP Bioenergy [a]	Vero Beach, FL	Ethanol	8.0	25	2.0
2012	KiOR	Columbus, MS	Liquids	12.2	25	3.1
Total				26.6	25%	6.7

[a] EPA refers to INEOS New Planet (INP) Bioenergy as INEOS Bio throughout this rule.

EIA's projections of cellulosic biofuel production in 2012 are very similar to EPA's projections discussed above and summarized in Section II.B.6 below. The lists of companies that EIA and EPA expect to generate cellulosic biofuel RINS in 2012 are the same. There are, however, several small differences in the volumes of cellulosic biofuel expected to be produced at some of the production facilities listed. EPA has slightly higher projections of cellulosic biofuel production for Fiberight (2 million gallons vs. 1.59 million gallons), INEOS Bio (3 million gallons vs. 2 million gallons), and American Process Inc. (0.5 million gallons vs. less than 0.2 million gallons). These slight variations are a result of different methodologies used by EIA and EPA to project biofuel production in future years. Both Fiberight and INEOS Bio are commercial scale facilities that plan to begin production in 2012. As a result, EIA has used a standard utilization factor of 25% (used for the first year of production for all commercial scale facilities) along with the nameplate capacity of these facilities to project their production volumes for 2012. EPA believes it is more appropriate to consider the timing of the anticipated start up of these facilities within 2012. Facilities planning to begin production early in the year should not have the same expected utilization factor as those planning to begin production near the end of the year. Both Fiberight and INEOS Bio plan to complete construction and begin the production of fuel in early 2012, and therefore EPA has projected production volumes from these facilities that are equivalent to 2012 utilization rates of slightly higher than 25% in comparison to their full, long-term production potential.

EIA's projected production volume for American Process Inc. assumes a utilization factor of 10%, consistent with the factor that EIA uses for all demonstration scale facilities. While this may be reasonable in many cases as the purpose of most pilot plants is not to produce fuel for commercial scale, American Process Inc. has communicated to EPA that it plans to produce volumes approaching its facility's nameplate capacity in their first year. While EPA believes this is unlikely due to the challenges of starting up a facility utilizing a technology that has not been proven at commercial scale, we believe a volume corresponding to a utilization rate higher than 10%, but at the low end of American Process Inc.'s target production range is appropriate. While the production volumes of the other companies listed in EIA and EPA's projected available volume tables are not identical, the differences are small and their impact on the overall volume projection is negligible.

There is also a slight variation in the nameplate capacities for two of the listed facilities, Fiberight and KiOR. This is once again the result of differing methods for determining the nameplate capacities used by EIA and EPA. EIA used publically available information to calculate the nameplate capacities for these two facilities. The Fiberight plant is a converted corn ethanol facility that had a production capacity of 25.5 million gallons per year. Fiberight announced they expected to be able produce cellulosic ethanol at 25% of the original capacity and these numbers formed the basis for EIA's nameplate capacity. Similarly for KiOR EIA's nameplate capacity was based on the number of tons the facility could process per day and the expected yield. EPA's nameplate capacities, conversely, are based on conversations with each of these companies. EPA does not believe these slight differences in nameplate capacities have a significant impact on the cellulosic biofuel volume projections made by EPA and EIA.

While the cellulosic biofuel volume projections for 2012 provided by EIA are not identical to those being finalized in this rule EPA believes that they are similar enough to support the volumes we are finalizing. Where differences exist they are primarily due to EPA's consideration of facility specific situations rather than use of uniform utilization factors. As discussed above, EPA believes this is appropriate, and that wherever possible these facility specific factors should be taken into account. CAA 211(o)(7)(D) vests the authority for making the projection with EPA, since it provides that the projection is ''determined by the Administrator based on the estimate provided [by EIA].'' If Congress intended that EPA simply adopt EIA's projection without an independent evaluation, it would not have specified that the projection is ''determined by the [EPA] Administrator''. Although the statute provides that our determination must be ''based on the estimate provided'' by EIA, we believe that our consideration of EIA's estimate in deriving our own projection as described above satisfies this statutory requirement.

5. Comments on the Proposed Rule

EPA received comments on our proposed rule recommending various methodologies or suggested volumes for the final rule. Several parties supported our projected volumes and emphasized the importance of maintaining a consistent policy supporting growth in the cellulosic biofuel industry. Other comments we received recommended that the volume we set for cellulosic biofuel be based only on the demonstrated production rates of facilities that have been in production for at least three months. EPA believes this approach is inconsistent with the requirement that the mandated volume of cellulosic biofuel be based on the projected, not demonstrated, volume for any given year. Using the approach recommended by the commenters would effectively project no market growth from the end of 2011 through 2012, and would lead to no 2012 market demand for additional cellulosic biofuel capacity that comes on line during the course of 2012, hindering industry growth. As a result, the incentives for the cellulosic biofuels industry to grow, which are one of the primary purposes

of the RFS program and which are consistent with Executive Order 13563, would be compromised.

Several other commenters claimed that cellulosic biofuel technology was not yet capable of producing the volumes of fuel indicated in our proposal and that the proposed range of cellulosic biofuels was too high. Chevron suggested that EPA finalize the lower end of the proposed range (3.55 million ethanol-equivalent gallons). After reassessing the state of the cellulosic biofuel industry and tracking the progress being made towards the production of cellulosic biofuels at commercial scale facilities, EPA believes the industry is capable of exceeding the lower end of the range of projected volume from our proposed rule. In order to provide the appropriate economic conditions for the cellulosic biofuel industry to grow in accordance with the objectives of the statute, it is important that these fuels, once produced, have a viable market. EPA believes that setting the 2012 standard for cellulosic biofuels at the low end of the proposed range, or some lower volume, could potentially result in a depressed market for cellulosic biofuel and would discourage cellulosic biofuel producers from producing quantities of fuel in 2012 that are actually attainable.

Alternatively, we also received comments requesting that EPA finalize the high end of the proposed volume (15.7 ethanol-equivalent gallons). While this approach would provide a strong incentive for potential cellulosic biofuel producers to maximize their production of fuel, EPA does not believe it would be consistent with the requirement that the volume mandate be based on the projected production volume. As discussed above, several companies have experienced delays in their construction plans since the proposed rule has been published, and others have lowered their production targets or indicated that they no longer intend to generate RINs for the cellulosic biofuel they produce. While it is possible that one or more of the companies for whom we have included volumes in our 2012 projection may produce a greater volume of fuel than we currently anticipate, EPA does not believe it would be appropriate to rely on such speculation in setting the applicable volume of cellulosic biofuel for 2012. We believe that the 2012 cellulosic biofuel applicable volume of 8.65 million gallons (10.45 million ethanol-equivalent gallons) finalized in this rule is a reasonable projection of the volume of cellulosic biofuel that will be produced and made available for RFS compliance in 2012. While this volume is slightly higher than the volume projected by EIA we believe this is appropriate based on the consideration of company specific factors such as when in the year the companies anticipate the start of fuel production and production targets shared with EPA. The difference in the methodologies used for EIA and EPA's projections is discussed in further detail in Section II.B.4.

The Consumers Energy Alliance, in addition to suggesting that the range of cellulosic biofuel production in our proposed rule was too high, also requested that EPA perform a cost-benefit analysis to determine the implications of our proposed standards. The Clean Air Act clearly states that in the event that the projected volume of cellulosic biofuel production for the following year is less than the applicable volume shown in Table II.A–1, EPA is to reduce the applicable volume of cellulosic biofuel to the projected volume available during that calendar year. Since the mandated volume for any given year is to be based solely on the projected volume available for that year, a cost-benefit analysis is not necessary.

Two cellulosic biofuel companies, American Process Inc. and ZeaChem, commented on the volume of cellulosic biofuels they expect to produce in 2012 and requested that EPA's projections of available volumes of cellulosic biofuel be adjusted accordingly. After consideration of these comments and additional information provided by these two companies EPA agrees that the adjustments they suggested are appropriate. As a result a volume of 500,000 gallons of cellulosic ethanol from American Process Inc., a volume representing the lower end of their production target for 2012, has been included in our projected available volume. The volume of fuel projected from ZeaChem's facility has been changed to 50,000 gallons of cellulosic ethanol in 2012 to more accurately reflect their current expectations for their facility.

Finally, EPA received several comments from obligated parties requesting that in any year in which actual annual production of cellulosic biofuel falls below the applicable volume used to set the annual standard, that EPA use its waiver authority to waive a volume of cellulosic biofuel equal to the shortfall in February of the following year, prior to the February 28 deadline for submission of compliance demonstration reports by obligated parties. This approach, these commenters argued, would ensure that their obligations match the number of cellulosic biofuel RINs that are available in the market. These comments deal with EPA's general waiver authority under CAA 211(o)(7)(A), and thus are not directly related to the annual standard setting process or the waiver authority that is specific to cellulosic biofuel under 211(o)(7)(D). At this time EPA has received no petitions for a waiver of the 2011 cellulosic biofuel volume under 211(o)(7)(A) due to inadequate domestic supply, and thus we are not considering at this time whether and how any portion of the 2011 cellulosic biofuel applicable volume should be waived.

6. Summary of Volume Projections

The information EPA has gathered on the potential cellulosic biofuel producers in 2012, described above, allows us to project facility-specific volumes of cellulosic biofuel production for 2012. This information is summarized in Table II.B.6–1 below.

TABLE II—B.6–1—CELLULOSIC BIOFUEL 2012 PROJECTED AVAILABLE VOLUME

Company name	Location	Feedstock	Fuel	Capacity (MGY)	Earliest production	2012 Projected available volume (MG)	Ethanol equivalent gallons (MG)
American Process Inc.	Alpena, MI	Waste Wood	Ethanol	0.9	Early 2012	0.5	0.5
Fiberight	Blairstown, IA	MSW	Ethanol	6	Early 2012	2.0	2.0
INEOS Bio[a]	Vero Beach, FL	Ag Residue, MSW.	Ethanol	8	May 2012	3.0	3.0
KiOR	Columbus, MS	Pulp Wood	Gasoline, Diesel	10	Mid 2012	3.0	4.8
KL Energy	Upton, WY	Bagasse	Ethanol	1.5	Online	0.1	0.1

TABLE II—B.6–1—CELLULOSIC BIOFUEL 2012 PROJECTED AVAILABLE VOLUME—Continued

Company name	Location	Feedstock	Fuel	Capacity (MGY)	Earliest production	2012 Projected available volume (MG)	Ethanol equivalent gallons (MG)
ZeaChem	Boardman, OR	Planted Trees	Ethanol	0.25	Early 2012	0.05	0.05
Total						8.65	10.45

[a] This facility is listed as INP Bioenergy in EIA's projections.

While the production volumes in Table II.B.6–1 have some uncertainty, we believe that a total volume of 8.65 million gallons (10.45 million ethanol-equivalent gallons) is reasonably attainable. By basing the 2012 cellulosic biofuel standard on the reasonably attainable volumes rather than proven production volumes, we aim to avoid a scenario in which cellulosic biofuel production exceeds the mandated volume; no mechanism exists for this standard to be raised should cellulosic biofuel production exceed the 2011 standard. Such a scenario would result in weak demand for cellulosic biofuels and RINs. Moreover, the standard that we set determines in large part the volumes of cellulosic biofuel that will be produced. We believe that the intent of Congress in establishing steadily increasing applicable volumes of cellulosic biofuel in the RFS program through EISA was to provide a reliable market for these fuels and in so doing to spur growth in the cellulosic biofuels industry. EPA believes the projected available volume finalized in this rule best reflects these intentions.

Based on our assessment of the potential production capabilities of individual companies as described above, EPA is finalizing the cellulosic biofuel standard for 2012 at 10.45 million ethanol-equivalent gallons of cellulosic biofuel. This number represents the volume of RIN-generating cellulosic biofuel that we believe can be made available for use as transportation fuel, heating oil, or jet fuel in 2012. It incorporates reductions from the annual production capacity of each facility based on when fuel production can begin and assumptions regarding a ramp-up period to full production. We believe that a production volume of 10.45 million ethanol-equivalent gallons is reasonably attainable despite the uncertainties. Moreover, by setting the standard for cellulosic biofuel based on the volumes that are reasonably attainable, we are providing incentives for producers to overcome uncertainties and greater opportunities for funding based on an established demand.

There are also a variety of factors that could lead to production volumes greater than those listed in Table II.B.6–1 and make up for potential shortfalls elsewhere. For instance:

- For each of the facilities listed, we are projecting that their production will be some volume less than the capacity of their facility. It is possible, however, that these companies could produce a greater volume of fuel than they are currently anticipating or has been projected by EPA.
- It is possible that companies that are currently targeting 2013 for commercial production may produce cellulosic biofuel ahead of schedule and generate RINs in 2012. None of this volume was included in our projection for 2012.
- A high demand for cellulosic biofuels may be sufficient to cause companies to import fuel into the United States, even if they currently have no plans to do so. As described in Section II.B.3 above, there are several foreign producers that are either producing cellulosic biofuel now, or could potentially produce some cellulosic biofuel volume in 2012.

Finally, we note that if the actual volume of cellulosic biofuel RINs that are available in 2012 falls short of the 10.45 million gallon RINs used to derive the 2012 cellulosic biofuel standard, obligated parties have other recourses:

- Purchase cellulosic biofuel waiver credits from the EPA (see further discussion in Section V.A)
- Carry over a deficit from 2012 into 2013 according to § 80.1427(b) under certain conditions

C. Advanced Biofuel and Total Renewable Fuel in 2012

Under CAA 211(o)(7)(D)(i), EPA has the discretion to reduce the applicable volumes of advanced biofuel and total renewable fuel in the event that the projected volume of cellulosic biofuel production is determined to be below the applicable volume specified in the statute. As described in Section II.B above, we are indeed projecting the volume of cellulosic biofuel production for 2012 at significantly below the statutory applicable volume of 500 million gallons. Because cellulosic biofuel is used to satisfy the cellulosic biofuel standard, the advanced biofuel standard, and the total renewable fuel standard, any reductions in the applicable volume of cellulosic biofuel will also affect the means through which obligated parties comply with the advanced biofuel standard and the total renewable fuel standard. Therefore, we have considered whether and to what degree to lower the advanced biofuel and total renewable fuel applicable volumes for 2012.

If the required volume of cellulosic biofuel for a given year is less than the volume specified in the statute, it is important to evaluate whether there would be sufficient volume of advanced biofuels to satisfy the applicable volume of advanced biofuel volume set forth in the statute. Even with a reduced volume of cellulosic biofuel, other advanced biofuels, such as biomass-based diesel, sugarcane ethanol, or other biofuels, may be available in sufficient volumes to make up for the shortfall in cellulosic biofuel.

Several commenters stated their belief that the applicable volume of advanced biofuel should always be lowered concurrently, and to the same degree, that the applicable volume of cellulosic biofuel is lowered from the levels set forth in the statute. Since we are finalizing a cellulosic biofuel applicable volume today that is approximately 490 million gallons below the 500 mill gal applicable volume specified in the statute, this approach would lead to a reduction in the advanced biofuel standard of 490 million gallons as well, from 2,000 mill gallons to 1,510 mill gallons. However, as described in the NPRM, we believe that it would not be consistent with the energy security and greenhouse gas reduction goals of the statute to reduce the applicable volume of advanced biofuel set forth in the statute if there are sufficient volumes of advanced biofuels available, even if those volumes do not include the amount of cellulosic biofuel that Congress may have desired. Our authority to lower the advanced biofuel and/or total renewable fuel applicable

volumes is discretionary, and in general we believe that actions to lower these volumes should only be taken if insufficient volumes of qualifying biofuel can be made available, based on such circumstances as insufficient production capacity, insufficient feedstocks, competing markets, constrained infrastructure, or the like. As discussed below, we project that sufficient volumes of advanced biofuel can be made available in 2012 such that the 2.0 bill gallon advanced biofuel requirement need not be reduced.

If we were to maintain the advanced biofuel, biomass-based diesel, and total renewable fuel volume requirements at the levels specified in the statute, while also lowering the cellulosic biofuel standard to 10.45 million ethanol-equivalent gallons, then 1,510 million gallons of the 2.0 billion gallon advanced biofuel mandate would be satisfied automatically through the satisfaction of the cellulosic and biomass based diesel standards. An additional 490 million ethanol-equivalent gallons of additional advanced biofuels would be needed. See Table II.C–1.

TABLE II—C–1—PROJECTED FUEL MIX IN 2012 ASSUMING NO CHANGE IN ADVANCED BIOFUEL OR TOTAL RENEWABLE FUEL VOLUME REQUIREMENTS

[Mill gallons]

	Ethanol-equivalent volume	Physical volume
Total renewable fuel	15,200	14,535–14,698
Conventional renewable fuel [a]	13,200	13,200
Total advanced biofuel	2,000	1,335–1,498
Cellulosic biofuel	10.45	8.65
Biomass-based diesel	1,500	1,000
Other advanced biofuel [b]	490	[c] 326–490

[a] Predominantly corn-starch ethanol.
[b] Rounded to nearest million gallons for simplicity.
[c] Physical volume is a range because other advanced biofuel may be ethanol, biodiesel, or some combination of the two.

The most likely sources of additional advanced biofuel would be imported sugarcane ethanol and additional biomass-based diesel, though there may also be some volumes of other types of advanced biofuel available as discussed below. To determine if there are likely to be sufficient volumes of these biofuels to meet the need for 490 million gallons of other advanced biofuel, we first examined historical data on ethanol imports and projections from EIA and USDA for 2012. Brazilian imports have made up a sizeable portion of total ethanol imported into the U.S. in the past, and these volumes were predominantly produced from sugarcane. Ethanol imports averaged about 380 million gallons per year over the last five years, and reached an all-time high of 730 million gallons in 2006.[9] However, ethanol imports were significantly lower in 2010 than in previous years, and continue to be low in the first half of 2011. This decline in imports may be related to the cessation of the duty drawback that became effective on October 1, 2008, to changes in world sugar prices, and increases in demand within Brazil.[10] Several commenters cited these lower import volumes in the last two years as evidence that importation of sugarcane ethanol will be low in 2012 as well.

However, we believe that the broader view of historical data on sugarcane ethanol imports supports our view that Brazil has significant export potential under the appropriate economic circumstances. Monthly ethanol imports in June and July of 2011 were significantly higher than during any of the previous 16 months, at 3 and 13 million gallons, respectively.[11] Moreover, Brazil continues to be second worldwide in the production of ethanol, producing a total of 6.9 bill gallons in 2009.[12] By establishing an increased U.S. demand for 490 million gallons of other advanced biofuel in 2012, we would be enhancing the export market for Brazilian sugarcane ethanol. This could increase the percentage of ethanol produced from sugarcane (as opposed to sugar production), and lead to higher volumes of sugarcane ethanol exported to the U.S. Insofar as there is insufficient availability of domestically produced advanced biofuel to meet the need for 490 mill gallons, the price of advanced biofuel RINs would likely increase, providing the incentive for Brazil to export more sugarcane ethanol into the U.S. California's Low Carbon Fuel Standard also went into effect in 2010, and may result in some refiners importing additional volumes of sugarcane ethanol from Brazil into California in 2012. These same volumes would count towards the federal RFS2 program as well.

Projections from other sources also suggest that a large portion of the 490 million gallons of advanced biofuel needed could be supplied by imported sugarcane ethanol. For instance, in its Annual Energy Outlook 2011, EIA projects ethanol imports of approximately 300 million gallons for 2012.[13] In addition, the university-based Food and Agricultural Policy Research Institute (FAPRI) released its 2011 U.S. and World Agricultural Outlook report in which it projects 2012 ethanol imports of 728 million gallons.[14] This is a substantial increase compared to FAPRI's previous projection of 317 mill gallons as cited in our NPRM. While other sources suggest that total Brazillian exports of sugarcane ethanol decreased in 2011 and may decrease in 2012, the higher RIN prices associated with the advanced biofuel mandate would be expected to create an incentive for a greater proportion of Brazillian exports to be imported into the U.S. For instance, according to the FAPRI report, the increase in imports into the U.S. would be concurrent with reductions in imports into other countries rather than an increase in exports of sugarcane ethanol from Brazil.

[9] "Monthly U.S. Imports of Fuel Ethanol," EIA, released 3/30/2011.

[10] Lundell, Drake, "Brazilian Ethanol Export Surge to End; U.S. Customs Loophole Closed Oct. 1," Ethanol and Biodiesel News, Issue 45, November 4, 2008.

[11] Monthly U.S. Imports of Fuel Ethanol, Energy Information Administration, Release Date 9/29/2011.

[12] Portal Brasil, Energy Matrix for Ethanol, *http://www.brasil.gov.br/sobre/economy/energy-matrix/ethanol/br_model1?set_language=en.*

[13] Table 11 of AEO2011, Report Number DOE/EIA–0383(2011). *http://www.eia.doe.gov/forecasts/aeo/tables_ref.cfm.*

[14] Table "Ethanol Trade", Commodity Outlook/Biofuels, FAPRI–ISU 2011 World Agricultural Outlook. *http://www.fapri.iastate.edu/outlook/2011/.*

We also examined the potential for excess biodiesel to help meet the need for 490 million gallons of advanced biofuel. The applicable volume of biomass based diesel established in the statute for 2012 is 1.0 billion gallons (which corresponds to 1.5 billion ethanol-equivalent gallons). As discussed more fully in Section II.D below, we believe that the biodiesel industry has the potential for producing volumes above 1.0 billion gallons if demand for such volume exists.

There are also other potential sources of advanced biofuels. Based on RIN generation reports collected via the EPA–Moderated Transaction System (EMTS), 32 million ethanol-equivalent gallons of advanced biofuel with a D code of 5 were produced in the first half of 2011.[15] Extrapolated to the end of the year, it would be reasonable to expect a total of over 60 million ethanol-equivalent gallons of such advanced biofuel to be produced in 2011. Production Outlook Reports also provided some insight into producers' expectations for 2012. For 2012, producers of advanced biofuel projected that they would produce about 80 million ethanol-equivalent gallons, composed of some combination of ethanol, renewable diesel, and heating oil.

Another potential source of advanced biofuels is electricity generated from renewable biomass that is used as a transportation fuel. EIA data indicates that in 2009, the most recent year for which data is available, 36.05 million megawatt-hours of electricity was generated from wood and wood derived fuels, and an additional 18.4 million megawatt-hours was generated from other biomass in the United States.[16] This is significantly more than the 6.8 million megawatt-hours of electricity used in the transportation sector in 2009,[17] equivalent to about 300 mill ethanol-equivalent gallons. While not all the feedstocks used to generate the electricity included in these totals would meet the RFS2's renewable biomass definition, this remains a very large potential source of advanced biofuel RINs.

Currently, there are no valid pathways in Table 1 to § 80.1426 for the generation of RINs representing electricity used as transportation fuel. However, several companies have approached EPA with requests for such a pathway, and investigations are underway. It is possible that one or more new pathways for electricity may be available for use in 2012.

In addition to verifying that the feedstocks used to generate renewable electricity meet the renewable biomass definition, producers would also be required to document that the electricity they produce is used as a transportation fuel in order to be eligible to generate RINs. Until recently there were very few vehicles capable of using electricity as a transportation fuel, limited mainly to electric trains and trolley cars. Expected increases in the number of vehicles with this capability, such as electric vehicles and plug in hybrids, has the potential to dramatically increase the degree to which electricity is able to be used as a transportation fuel. Verifying that the renewable electricity produced is used as a transportation fuel would still remain a challenge, however the potential for capitalizing on the RIN value, without the necessity of making major changes in the areas of fuel production, distribution, or end use, may be a large enough incentive to overcome this challenge. While the uncertainties associated with the generation of advanced biofuel RINs representing renewable electricity used as transportation fuel prevent EPA from making a quantitative projection for 2012, such RINs may nevertheless play a role in meeting the advanced biofuel standard.

In light of the potential volumes of imported sugarcane ethanol, excess biodiesel, and other sources of advanced biofuel, we continue to believe that there will likely be sufficient volumes of advanced biofuels to meet the need for 490 million ethanol-equivalent gallons. As a result, the applicable volume of advanced biofuel set forth in the statute need not be lowered. A number of commenters on the NPRM agreed with this assessment. However, several commenters raised a concern about the ethanol blendwall, saying that the volume of ethanol that can be legally and practically consumed in 2012 is a limiting factor in how much advanced biofuel can be consumed. We disagree. Based on gasoline energy demand projections from EIA,[18] a total of about 14.3 bill gallons of ethanol could be consumed in 2012 if all gasoline contained 10% ethanol.[19] Under the requirements of the RFS program, however, the total volume of ethanol that would need to be consumed to meet the RFS standards would be no more than 13.7 bill gallons in 2012.[20] This assumes an extreme case in which all renewable fuel that is not advanced biofuel is assumed to be ethanol, and all advanced biofuel other than biomass-based diesel is also assumed to be ethanol.

It is possible that more ethanol may be produced/imported in 2012 than is necessary to meet the RFS requirements, and such circumstances could accelerate the arrival of the blendwall. However, this would only occur if market forces favored the consumption of higher volumes of ethanol, and we cannot make reliable predictions of such market forces. Since the applicable standards are set before a given compliance year begins, obligated parties should be coordinating with producers, distributors, and blenders of the various forms of ethanol (e.g. cellulosic ethanol, corn-ethanol, sugarcane ethanol) to ensure that all RFS standards are met by the end of the compliance period.

Based on our assessment of the availability of volumes of advanced biofuel beyond those required to meet the cellulosic biofuel and biomass-based diesel standards, we do not believe that the advanced biofuel standard need be lowered below the 2.0 billion gallon level specified in the Act. Thus, we are not reducing the applicable volume of advanced biofuel for 2012.

A number of parties that commented on the NPRM requested that the applicable volume for total renewable fuel in 2012 be reduced. However, all such commenters tied the reduction in total renewable fuel to a reduction in the advanced biofuel standard. Since we are not lowering the advanced biofuel standard for 2012, and there are expected to be sufficient volumes of corn-ethanol to meet the need for 13.2 bill gallons of conventional renewable fuel (see Table II.C–1), we do not believe that there is a need to lower the total renewable fuel standard.

D. Biomass-Based Diesel in 2012

Unlike for cellulosic biofuel, the statute does not require EPA to project available volumes of biomass-based

[15] RFS2 EMTS Informational Data, updated on August 18, 2011. *http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfsdata.htm.*

[16] Table ES1 of Electric Power Industry 2009: Year in Review. Available online: *http://www.eia.doe.gov/cneaf/electricity/epa/epayir.pdf.*

[17] Table 36 of AEO2011, Report Number DOE/EIA–0383(2011). Number based on the conversion that 1 megawatt hour is equivalent to 3.41 million BTU *http://www.eia.doe.gov/forecasts/aeo/tables_ref.cfm.*

[18] Total energy demand for light-duty vehicles, motorcycles, and nonroad per AEO 2011 Tables 10, 45, and 46.

[19] In reality, there may be some areas where gasoline without ethanol endures, but there will also be some E85 and potentially other gasoline-ethanol blends as well. We have used a scenario consisting of 100% E10 for this exercise.

[20] From Table II.C–1, sum of ethanol-equivalent gallons of conventional renewable fuel, cellulosic biofuel, and other advanced biofuel.

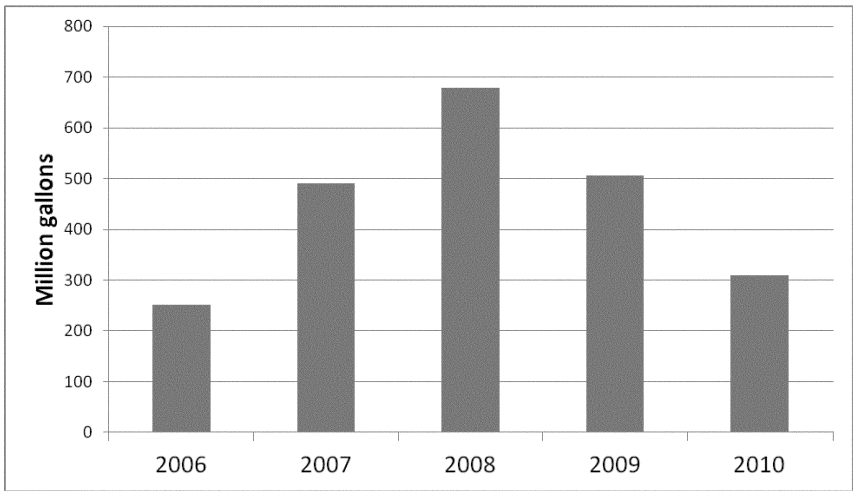
diesel for years up through 2012 and to base the standard on the projected available volume. Instead, the standard for 2012 is to be based on the statutory applicable volume of 1.0 bill gallons. However, the statute does include waiver provisions that allow for lowering the applicable volume of biomass-based diesel under certain circumstances. Moreover, as described more fully in Section II.C above, we must determine whether the required volumes of advanced biofuel and/or total renewable fuel should be reduced if we reduce the required volume of cellulosic biofuel. Since biomass-based diesel is also an advanced biofuel, the amount of biomass-based diesel that is consumed in 2012 directly affects our consideration of adjustments to the volumetric requirements for advanced biofuel and total renewable fuel. We therefore investigated whether the applicable volume of 1.0 bill gallons for biomass-based diesel is achievable in 2012, and whether additional volumes are also feasible.

We examined recent production rates, production capacity of the industry, and projections for future production from a variety of sources. Although there are several different fuel types that can qualify as biomass-based diesel, biodiesel is by far the predominant type. Thus, our assessment focused primarily on biodiesel, though we also investigated potential volumes of renewable diesel.

According to information from the EPA–Moderated Transaction System (EMTS) and RIN generation reports submitted to EPA from producers, we estimate that the volume of biomass-based diesel produced in 2010 was about 380 mill gallons.[21] A number of commenters pointed to this low volume as an indication that the volume requirements of 800 mill gallons in 2011 and 1.0 bill gallons in 2012 are not achievable. However, many of the activities of the biodiesel industry in 2010 were due to unique circumstances that may not apply in 2012. It is likely that a contributing factor to the lower production volumes in 2010 was the expiration of the biodiesel tax credit at the end of 2009 and its absence throughout 2010, and the fact that the RFS program effectively created a demand for about 345 mill gallons in 2010.[22] A more comprehensive view of historical biodiesel production levels strongly indicates that the U.S. biodiesel industry has produced higher volumes when demand for it existed, and that as a result the industry has the capability to produce greater volumes than it did in 2010 under the appropriate circumstances. This point is illustrated in Figure II.D–1 below.

Figure II.D-1

Historical Domestic Production of Biodiesel



Source: EIA Monthly Energy Review, Oct 2011, Table 10.4

The biodiesel industry's production potential supports the view that it can more than satisfy the applicable volume of biomass based diesel specified in the statute for 2012. As of August, 2011, the aggregate production capacity of biodiesel plants in the U.S. was estimated at 2.4 billion gallons per year across 148 facilities.[23] We expect the time and reinvestment required to ramp up production at existing facilities to be less than the time required to build and begin production at new plants, which takes about a year on average.[24] Thus, restarting idled plants will not be a hindrance to meeting the applicable volumes for biomass-based diesel in 2011 or 2012. A higher mandate for biomass-based diesel will increase demand for biodiesel with associated increases in RIN prices. This in turn

[21] Consists of approximately 209 mill gallons as recorded through EMTS for volume produced under the RFS2 regulations in July through December, and approximately 171 mill gallons as recorded through RIN generation reports submitted by producers for volume produced under the RFS1 regulations in January through June.

[22] See question 6.7 in EPA's ''Questions and Answers on Changes to the Renewable Fuel Standard Program (RFS2)'', *http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfs2-aq.htm#6*.

[23] Figures taken from National Biodiesel Board's Member Plant List as of August 22, 2011. Some plants did not report production capacity. *http://biodiesel.org/buyingbiodiesel/plants/showall.aspx*.

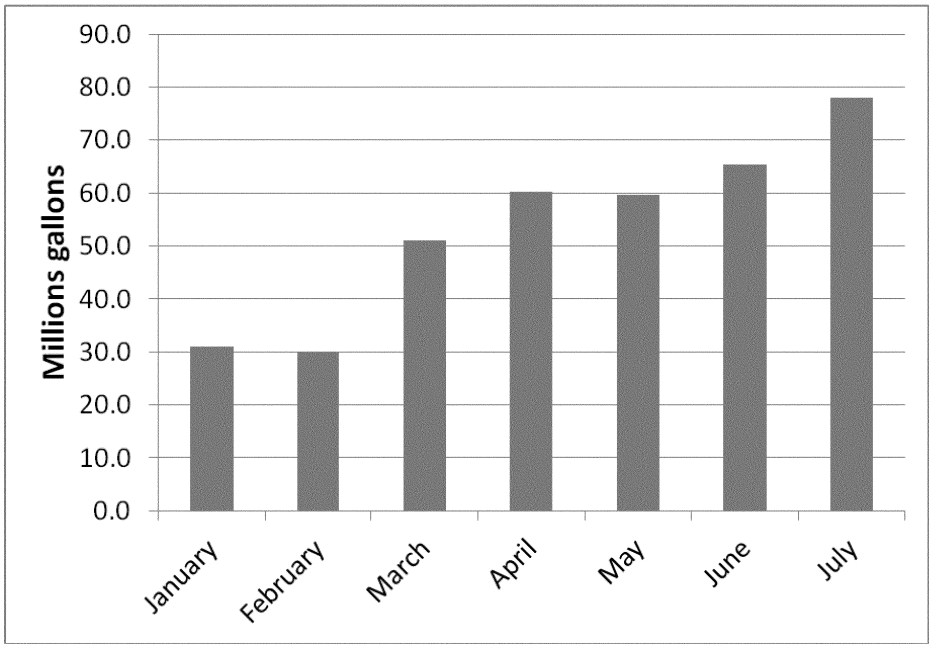
[24] Based on construction times for new plants listed in Biodiesel Magazine from July 2006 through May 2009.

will create the incentive for biodiesel producers to put idled capacity into production.

Additionally, information from the U.S. Census Bureau indicates that monthly production volumes of biodiesel have increased steadily in the first half of 2011, reaching about 78 mill gallons by July.[25] See Figure II.D–2.

Figure II.D-2

2011 Domestic Production of Biodiesel



Over the seven months shown in this figure, biodiesel production increased by an average of about 16% each month. This trend demonstrates that the industry is responding to the higher demand created by the 800 mill gal biomass-based diesel volume requirement under the RFS program in 2011. Biodiesel production will only need to increase at a more modest rate of about 3% each month after July in order for the total 2011 production volume to reach 800 mill gallons. Moreover, further increases in monthly production volumes would not be necessary after December 2011 for the industry to reach a total production volume of 1.0 bill gallons in 2012. We believe, therefore, that the 1.0 bill gallon requirement for biomass-based diesel in 2012 can be met. Moreover, given the increases in monthly production volumes that occurred in the first half of 2011 and the significant amount of underutilized production capacity that exists within the biodiesel industry, there is also reason to believe that monthly production volumes will increases after July 2011 at a rate that is more than needed to meet the statutory biomass-based diesel volume requirements, providing additional volumes that can be used to meet the advanced biofuel standard.

Projections from other sources provide additional support to our conclusions that 1.0 bill gal biomass-based diesel can be produced in 2012. For instance, the U.S. Department of Agriculture projects that over 400 mill gallons of biodiesel will be produced from soybean oil in 2012, and adds that ''Although some other first-use vegetable oils are also used to produce biodiesel, most of the remaining biodiesel production needed to reach the 1-billion-gallon mandate of the 2007 Energy Act uses animal fats or recycled vegetable oil as the feedstock.'' [26] This projection is further supported by the Agricultural Marketing Resource Center at Iowa State University, which projects that soy-oil biodiesel production may reach as high as 470 mill gallons and that non-soy biodiesel may reach as high as 460 mill gallons.[27] Both of these sources project more growth in non-soy oil feedstock volumes than soy oil. Finally, EIA projects that the total volume of biodiesel in 2012 would be about 830 mill gallons.[28] While all of these projections suggest that volumes of biodiesel may fall short of 1.0 bill gallons, they do not take into account the increase in monthly production volumes as noted above, nor sources of renewable diesel that will also be available. For instance, Dynamic Fuels has constructed one plant in Geismar, Louisiana that started production of renewable diesel in November, 2010.[29] In the final RFS2 rule, we projected that

[25] U.S. Census Bureau, Fats and Oils, Production, Consumption, and Stocks, Survey M311K. *http://www.census.gov/manufacturing/cir/historical_data/m311k/index.html.* Assumes 7.68 lb/gal conversion.

[26] USDA Agricultural Projections to 2020, Long-Term Projections Report OCE–2011–1, February 2011. See Table 24. Assumes 7.68 lb/gal.

[27] Soybean Oil and Biodiesel Usage Projections and Balance Sheet, updated 2/18/2011. A version made available on 8/1/2011 shows similar volumes of soybean oil for biodiesel use, but does not provide information about non-soy oil sources of biodiesel. *http://www.extension.iastate.edu/agdm/crops/outlook/soybeanbalancesheet.pdf.* Values cited are for the ''High'' case.

[28] Short-Term Energy Outlook, August 2011. Table 8.

[29] Project status updates are available via the Syntroleum Web site, *http://dynamicfuelsllc.com/wp-news/.*

annual renewable diesel production could reach 150 mill gallons based on feedstock availability. Renewable diesel can also be produced at existing refineries with little modification to processing equipment.[30] Thus, we currently believe that the total production volume of biomass-based diesel can readily reach 1.0 bill gal in 2012.

We also reviewed information submitted by registered producers of biomass-based diesel under the requirements of § 80.1449 for Production Outlook Reports. Of the 65 facilities that submitted a report, the total projected 2012 volume of biomass-based diesel was 937 mill gallons. We believe that this projection is indicative of the industry's expectation that the applicable volume requirement for 2012 will be 1.0 bill gallons and its intention to meet that requirement. Moreover, the projection provided in these reports likely underestimates the actual expectations and capabilities of the industry, since the number of facilities that submitted a report is far less than the total number of facilities capable of producing biodiesel and renewable diesel.

In additional to production capacity and projections of 2012 production volume, we also investigated feedstocks used to produce biomass-based diesel. We believe that there will be sufficient sources of qualifying renewable biomass to more than meet the needs of the biodiesel industry in 2012. The largest sources of feedstock for biodiesel in 2012 are expected to be soy oil, canola oil, rendered fats, and corn oil extracted during production of fuel ethanol. In response to the NPRM, the National Biodiesel Board (NBB) cited historically high soybean production rates for 2011 as evidence that there will be ample volumes of soybean oil available for biodiesel production. Likewise, the Renewable Energy Group (REG) provided information on significant increases in the availability of inedible corn oil from ethanol producers that it believes will occur in the next 1–2 years.

While commenters did not provide any information suggesting that the applicable volume of 1.0 bill gallons cannot be reached, some raised concerns about impacts on other industries and feedstock price. For instance, the American Trucking Association (ATA) stated that feedstocks will need to be diverted from other uses in order to meet the 1.0 bill gallon requirement, and the American Cleaning Institute (ACI) provided information about how such a diversion could affect the oleochemical industry. We address concerns about price in more detail below in our discussion of ATA's request for a waiver of the 2012 applicable volume of 1.0 bill gallons.

While we agree that the total volume of animal fats is largely inelastic and is unlikely to grow significantly due to the presence of the increasing market for biomass-based diesel, we also agree with the statement from ACI that ''there is nothing in EISA or the proposed rule that limits the amount of animal fats that can be used to meet the mandate.'' Under the statutory definition of renewable biomass, valid feedstocks include animal waste material and animal byproducts. We believe that animal fats fall into these categories, and as a result we do not have the authority to exclude or limit volumes of animal fats that are used for production of biomass-based diesel. Such wastes could potentially be considered ''biogenic waste oils/fats/greases'' or ''non-cellulosic portions of separated food waste'' under the RIN-generating pathways listed in Table 1 to § 80.1426, and could thus be eligible for the production of RIN-generating biofuel.

In response to the NPRM, we received comments both in support of and opposed to our proposal to maintain the statute's applicable volume of 1.0 bill gallons for biomass-based diesel in 2012. In general, producers of biodiesel and crop-based feedstocks were supportive, citing the sufficiency of available feedstocks and production capacity. Several supporters indicated that historically low biodiesel production volumes are not an appropriate reference point on which to base the capabilities of the industry for the future, since the higher biomass-based diesel mandates established by Congress for 2011 and 2012 are expected to drive production volumes more than any other factor.

Parties opposed to maintaining the statutory applicable volume of 1.0 bill gallons for 2012 were primarily obligated parties, as well as representatives of diesel trucking companies and the oleochemical industry. To a large degree, these commenters pointed to historical biodiesel production levels in support of their belief that 1.0 bill gallons in 2012 is not achievable. As described above, we do not agree with this conclusion.

One party opposed to maintaining the 1.0 bill gal requirement for 2012 also raised concerns about infrastructure. We acknowledge that the required expansion of the biodiesel handling capacity at terminals will represent a challenge to industry. However, as discussed in the NPRM, we continue to believe that there will be sufficient biomass-based diesel distribution infrastructure in place to support the use of 1.0 bill gal biodiesel in 2012. For instance, NBB stated in their comments that in most markets, terminals can treat 5% biodiesel blends as a fungible commodity like diesel fuel and that they believe that many terminals may be storing B5 blends. To the extent terminals store a finished B5 blend, it would obviate the need for much of the segregated biodiesel storage and blending capability that is assumed in our infrastructure analysis. The Iowa Biodiesel Board stated that claims that industry cannot accommodate the distribution of the target gallons are baseless and cited various examples of recent biodiesel blending initiatives at Iowa terminals.

Industry activities are currently progressing to ramp up biodiesel consumption from the approximately 380 mill gallons estimated to be used in the U.S. in 2010 to the volumes that will be needed in 2011 to meet the biomass-based diesel volume requirement. For example, Kinder Morgan and the Renewable Energy Group opened a substantial biodiesel distribution facility to serve the Chicago area in December of 2010.[31] Magellan also recently announced that it plans to complete its biodiesel blending facility in Sioux Falls Minnesota in 2011.[32] In June of this year, Sunoco Logistics and Sprague Energy opened a new terminal facility to supply biodiesel blended transportation fuel and heating fuel to New Jersey.[33] These new terminal facilities employ segregated biodiesel storage and blending capability. Just as there has been considerable biodiesel production capacity idled due to lack of demand which will be brought back on line as biodiesel volumes ramp up, we believe that there may also be substantial idled biodiesel distribution assets that could be brought back into service. It seems reasonable to assume that at least some of the distribution assets used previously to deliver biodiesel

[30] For such a product to qualify for biomass-based diesel, however, it cannot be co-processed with petroleum feedstock. This might limit its potential for refinery-based production of qualifying product.

[31] Biodiesel Magazine, November 17, 2010. *http://www.biodieselmagazine.com/articles/4568/chicago-area-terminal-soon-to-offer-biodiesel.*

[32] Report to the Legislature, Annual Report on Biodiesel, Minnesota Department of Agriculture, January 15, 2011. *http://www.mda.state.mn.us/en/news/government/~/media/Files/news/govrelations/legrpt-biodiesel2011.ashx.*

[33] *http://www.tankterminals.com/news_detail.php?id=1284.*

manufactured at now idled production plants would still be available.

Of the parties that requested a reduction in the applicable volume of 1.0 bill gallons for 2012, the American Trucking Association (ATA) and Chevron explicitly invoked the waiver mechanism provided at 211(o)(7)(E). The full text of this statutory provision is shown below:

(E) BIOMASS-BASED DIESEL.—

(i) MARKET EVALUATION.—The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall periodically evaluate the impact of the biomass-based diesel requirements established under this paragraph on the price of diesel fuel.

(ii) WAIVER.—If the Administrator determines that there is a significant renewable feedstock disruption or other market circumstances that would make the price of biomass-based diesel fuel increase significantly, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall issue an order to reduce, for up to a 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed 15 percent of the applicable annual requirement for biomass-based diesel. For any calendar year in which the Administrator makes a reduction under this subparagraph, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(iii) EXTENSIONS.—If the Administrator determines that the feedstock disruption or circumstances described in clause (ii) is continuing beyond the 60-day period prescribed in clause (ii) or this clause, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, may issue an order to reduce, for up to an additional 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed an additional 15 percent of the applicable annual requirement for biomass-based diesel.

The waiver authority provided in paragraph 211(o)(7)(E)(ii) is based on an EPA determination that there ''is'' a feedstock disruption or other market circumstance that would make the price of biomass-based diesel rise significantly. The authority to extend a temporary waiver in paragraph (iii) is based on an EPA determination that such disruption or circumstance ''is continuing.'' Thus, we believe that any waiver of the 2012 biomass-based diesel requirements under this statutory provision must be based on an evaluation of feedstock conditions or other circumstances that exist currently and ''would make'' the price of biomass based diesel rise significantly in 2012. If Congress had intended that we project future market circumstances that might lead to significant prices increases, it could have used ''will be'' in place of ''is'' in paragraph 211(o)(7)(E)(ii). Thus, we believe that any waiver of the biomass-based diesel requirements for 2012 must be based on a current evaluation of the market, rather than a projected one.

We do not believe that the information provided by Chevron and ATA warrants a waiver of the 2012 biomass-based diesel volume at this time. While ATA provided some information on the relative price of biodiesel and conventional diesel, it did not demonstrate how this price difference represented a price increase as required under the statute. Also, they did not cite any particular renewable feedstock disruption or other market circumstance to demonstrate how the difference in price between conventional diesel fuel and biomass-based diesel meets the statutory criterion for a significant increase in the price of biomass-based diesel.

Both Chevron and ATA cite an expected expiration of the biodiesel tax credit at the end of 2011 as a reason that prices will increase significantly. EPA has not determined whether the expiration of a tax credit should be considered a ''market circumstance'' within the meaning of CAA 211(o)(7)(E)(ii), and is making no determination regarding that matter at this time. Whether or not such a development would be a ''market circumstance,'' it is clear that it is not an existing circumstance, and conjecture that the tax credit may not be continued in the future does not provide an appropriate basis for a waiver under 211(o)(7)(E)(ii). Apart from possible consideration under the statutory waiver provisions, however, we note that the applicable volumes set by Congress must be met regardless of the status of Federal or state tax credits, subsidies, incentives, and the like.

One commenter requested a cost-benefit analysis in the context of determining the appropriate volume for biomass-based diesel in 2012. Under the statute, we are to set the percentage standard for biomass-based diesel for 2012 based on the applicable volume of 1.0 bill gallons specifically set forth in the statute in CAA 211(o)(2)(B)(IV). While the statute does provide limited mechanisms for waiving all or a portion of any annual biomass-based diesel standard in 2012 under CAA 211(o)(7), the statute does not require a cost-benefit analysis either in setting a standard based on the statutory applicable volume or in considering whether or not to issue a waiver. For instance, under 211(o)(7)(A), waivers can be granted based on an EPA finding of severe harm to the economy or environment of a state, region, or the United States, or inadequate domestic supply. Under 211(o)(7)(E) waivers can be granted based on a significant renewable feedstock disruption or other market circumstance that would make the price of biomass-based diesel fuel increase significantly. Neither of these statutory provisions provides for a comparison of the costs associated with meeting the biomass-based diesel standard to the benefits of meeting that standard. Therefore, we do not believe that cost-benefit analyses are necessary or appropriate in the context of considering the 2012 biomass-based diesel volume of 1.0 bill gallons.

Based on our review of the production potential of the biodiesel industry, projections from several sources, and our assessment of available feedstocks, we believe that the 1.0 billion gallons needed to satisfy the applicable volume of biomass-based diesel specified in the statute can be produced in 2012, and that more than 1.0 bill gallons of production is possible. Moreover, we do not believe that waiving a portion of the 2012 biomass-based diesel volume of 1.0 bill gallons under the provisions of 211(o)(7)(E) is appropriate at this time.

III. Final Percentage Standards for 2012

A. Background

The renewable fuel standards are expressed as a volume percentage, and are used by each refiner, blender or importer to determine their renewable volume obligations (RVO). Since there are four separate standards under the RFS2 program, there are likewise four separate RVOs applicable to each obligated party. Each standard applies to the sum of all gasoline and diesel produced or imported for use in the U.S. The applicable percentage standards are set so that if each regulated party meets the percentages, then the amount of renewable fuel, cellulosic biofuel, biomass-based diesel, and advanced biofuel used will meet the volumes required on a nationwide basis.

As discussed in Section II.B.6, we are finalizing a required volume of cellulosic biofuel for 2012 of 8.65 million gallons (10.45 million ethanol equivalent gallons). The advanced biofuel and total renewable fuel volumes will not be reduced below the applicable volumes specified in the statute. The final 2012 volumes used to determine the four percentage standards are shown in Table III.A–1.

TABLE III.A–1—FINAL VOLUMES FOR 2012

	Actual volume	Ethanol equivalent volume
Cellulosic biofuel	8.65 mill gal	10.45 mill gal.
Biomass-based diesel	1.0 bill gal	1.5 bill gal.
Advanced biofuel	2.0 bill gal	2.0 bill gal.
Renewable fuel	15.2 bill gal	15.2 bill gal.

The formulas used in deriving the annual renewable fuel standards are based in part on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, that will be used in the year in which the standards will apply. Producers of other transportation fuels, such as natural gas, propane, and electricity from fossil fuels, are not subject to the standards, and volumes of such fuels are not used in calculating the annual standards. Since the standards apply to producers and importers of gasoline and diesel, these are the transportation fuels used to set the standards, and then again to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

B. Calculation of Standards

1. How are the standards calculated?

The following formulas are used to calculate the four percentage standards applicable to producers and importers of gasoline and diesel (see § 80.1405):

$$\mathrm{Std}_{\mathrm{CB,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{CB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{BBD,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{BBD,\,i}} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{AB,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{AB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{RF,\,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{RF,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$\mathrm{Std}_{\mathrm{CB,i}}$ = The cellulosic biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{BBD,i}}$ = The biomass-based diesel standard (ethanol-equivalent basis) for year i, in percent.

$\mathrm{Std}_{\mathrm{AB,i}}$ = The advanced biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{RF,i}}$ = The renewable fuel standard for year i, in percent.

$\mathrm{RFV}_{\mathrm{CB,i}}$ = Annual volume of cellulosic biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{BBD,i}}$ = Annual volume of biomass-based diesel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{AB,i}}$ = Annual volume of advanced biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{RF,i}}$ = Annual volume of renewable fuel required by section 211(o) of the Clean Air Act for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

GE_i = The amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively.

DE_i = The amount of diesel projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively.

The four separate renewable fuel standards for 2012 are based in part on the gasoline and diesel consumption volumes projected by EIA. The Act requires EPA to base the standards on an EIA estimate of the amount of gasoline and diesel that will be sold or introduced into commerce for that year. EIA estimates 8.85 million barrels per day of gasoline (~136 billion gallons) and 3.36 million barrels per day of transportation diesel (~ 52 billion gallons) will be sold or introduced into commerce in 2012.[34] Because diesel used in ocean-going vessels is excluded from the RFS2 program, that amount must be subtracted from the total projected transportation diesel value. EIA estimates approximately 26,000 barrels per day of transportation diesel will be used in ocean-going vessels in 2012, resulting in approximately 3.334 million barrels per day (51.11 billion gallons) projected for all other transportation uses in 2012.

The gasoline and diesel volumes are adjusted to account for renewable fuel volumes—ethanol (estimated by EIA) and biodiesel (based on EIA's Short-Term Energy Outlook (STEO)). For 2012, these values are 0.87 million barrels per day (~13 billion gallons) and 0.119 quadrillion Btu[35] (~ 0.9 billion gallons), respectively.

In addition, because Alaska does not participate in the RFS2 program, the gasoline and diesel volumes must be further reduced by Alaska's projected share of transportation fuels. To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska is subtracted from the totals provided by DOE. Just as with its corresponding gasoline and diesel volumes, renewable fuels used in Alaska are not included in the renewable fuel volumes that are subtracted from the total gasoline and diesel volume estimates. Section 211(o) of the Clean Air Act requires that the renewable fuel be consumed in the contiguous 48 states, and any other state or territory that opts-in to the program (as Hawaii has done). However, because renewable fuel produced in Alaska is unlikely to be transported to the contiguous 48 states or to Hawaii, including Alaska's renewable fuel volumes in the calculation of the standard would not serve the purpose intended by section 211(o) of the Clean Air Act of ensuring that the statutorily required renewable fuel volumes are consumed in the 48 contiguous states and any state or territory that opts-in.

The 2012 Alaska fractions of U.S. consumption are determined from the most recent (2009) EIA State Energy Data System (SEDS) estimates, assuming fairly constant Alaska to U.S. year-to-year ratios. We used Table CT1 ''Energy Consumption Estimates for Major Energy Sources in Physical Units, 1960–2009, Alaska'' to get total gasoline and ethanol consumption for Alaska for 2009. We coupled this data with total U.S. estimates from Table C2 ''Energy Consumption Estimates for Major Energy Sources in Physical Units, 2009'' to determine the corresponding Alaska fractions. The gasoline fraction is approximately 0.2%. Ethanol use in Alaska is estimated at 8.4% of its gasoline consumption (based on the data in Table CT1), or approximately 0.2% of national ethanol consumption. Because only transportation diesel fuel is subject to the RFS program, we need more specific data than that used to calculate the gasoline and ethanol fractions. We used data from Table C8 ''Transportation Sector Energy Consumption Estimates, 2009'' to calculate the Alaska transportation distillate fuel oil fraction, 0.8%. Biodiesel use is assumed to be zero. The Alaska and U.S. data just described are shown in Table III.B–1.

TABLE III.B–1—ALASKA AND U.S. DATA

	Alaska	U.S.	Alaska fraction[x] (in percent)
Motor Gasoline	6725 Mbbl[a]	3283.7 MMbbl[b]	0.2
Fuel Ethanol	565 Mbbl[a]	262.8 MMbbl[b]	0.2
Transportation Distillate	46.1 tBtu[c]	5528.3 tBtu[c]	0.8

[a] Source: EIA State Energy Data System, Table CT1 ''Energy Consumption Estimates for Major Energy Sources in Physical Units, 1960–2009, Alaska''.
[b] Source: EIA State Energy Data System, Table C2 ''Energy Consumption Estimates for Major Energy Sources in Physical Units, 2009''.
[c] Source: EIA State Energy Data System, Table C8 ''Transportation Sector Energy Consumption Estimates, 2009''.
[x] Calculated value.

2. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, Congress provided a temporary exemption to small refineries (those refineries with a crude throughput of no more than 75,000 barrels of crude per day) through December 31, 2010. In RFS1, we exercised our discretion under section 211(o)(3)(B) and extended this temporary exemption to the few remaining small refiners that met the Small Business Administration's (SBA) definition of a small business (1,500 employees or less company-wide) but did not meet the statutory small refinery definition as noted above. Because EISA did not alter the small refinery exemption in any way, the RFS2 program regulations exempted gasoline and diesel produced by small refineries and small refiners in 2010 from the renewable fuels standard (unless the exemption was waived), see 40 CFR 80.1141.

Under the RFS program, Congress provided two ways that small refineries can receive a temporary extension of the exemption beyond 2010. One is based on the results of a study conducted by the Department of Energy (DOE) to determine if small refineries would face a disproportionate economic hardship under the RFS program. The other is based on EPA determination of disproportionate economic hardship on a case-by-case basis in response to refiner petitions.

In January 2009, DOE issued a study which did not find that small refineries would face a disproportionate economic hardship under the RFS program.[36] The conclusions were based in part on the expected robust availability of RINs and

[34] Letter, Howard K. Gruenspecht, Acting Administrator, U.S. Energy Information Administration, to Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency, October 19, 2011.

[35] Table 8 ''U.S. Renewable Energy Supply and Consumption,'' Short Term Energy Outlook, U.S. Energy Information Administration, October 2011.

[36] DOE report ''EPACT 2005 Section 1501 Small Refineries Exemption Study'', (January, 2009).

EPA's ability to grant relief on a case-by-case basis. As a result, beginning in 2011 small refiners and small refineries were required to participate in the RFS program as obligated parties, and there was no small refiner/refinery volume adjustment to the 2011 standard as there was for the 2010 standard.

Following the release of DOE's 2009 small refinery study, Congress directed DOE to complete a reassessment and issue a revised report. DOE recently re-evaluated the impacts of the RFS program on small entities and concluded that 21 small refineries would suffer a disproportionate hardship if required to participate in the program.[37] As a result, these refineries will be exempt from being obligated parties for a minimum of two additional years, 2011 and 2012.[38] In 2009, the gasoline produced by refineries identified in the DOE report as well as those refineries exempted through the petition process constituted approximately 3.6% of total US gasoline, and 4.5% of total US diesel. Applying these percentages to the 2012 projections of gasoline and diesel volumes yields exempt small refinery gasoline volume of 4.87 billion gallons and diesel volume of 2.28 billion gallons.

CAA section 211(o) requires that the small refinery adjustment also account for renewable fuels used during the prior year by small refineries that are exempt and do not participate in the RFS2 program. Accounting for this volume of renewable fuel would reduce the total volume of renewable fuel use required of others, and thus directionally would reduce the percentage standard. However, as we discussed in RFS1, the amount of renewable fuel that would qualify, i.e., that was used by exempt small refineries but not used as part of the RFS program, is expected to be very small. In fact, these volumes would not significantly change the resulting percentage standards. Whatever renewable fuels small refineries blend will be reflected as RINs available in the market; thus there is no need for a separate accounting of their renewable fuel use in the equations used to determine the standards. Thus we assign a value of zero to small refinery renewable fuel use.

The 2012 standards reflect the exemption of these refineries. In addition, and separate from the DOE determination, EPA may extend the exemption for individual small refineries on a case-by-case basis if they demonstrate disproportionate economic hardship.

In the NPRM, we stated that ''requests for exemptions that are approved after the release of the final 2012 RFS standards will not affect the 2012 standards.'' This position is unchanged from that set in the final rule establishing the 2011 standards.[39] At that time, we stated, ''EPA believes the Act is best interpreted to require issuance of a single annual standard in November that is applicable in the following calendar year, thereby providing advance notice and certainty to obligated parties regarding their regulatory requirements. Periodic revisions to the standards to reflect waivers issued to small refineries or refiners would be inconsistent with the statutory text, and would introduce an undesirable level of uncertainty for obligated parties.'' However, a few commenters took issue with this approach. Specifically, these commenters maintain that EPA did not provide notice and comment opportunities regarding the extensions of the small refinery exemptions for the current compliance period (2011), and that EPA cannot grant such extensions (mid-year) without modifying the standards because such authority is not provided in the statute. In addition, these commenters extend the application of their comments to any extensions of exemptions that may occur after issuance of the final 2012 standards. Commenters suggested requiring petitions to be submitted in time to be considered in the annual standard-setting process. One commenter also suggested that the volumes waived in 2011 as a result of the small refiner waivers be ''made up'' in setting the 2012 standards. EPA understands the desire of the commenters to have the annual required volumes of renewable fuels realized. However, while the statute requires EPA to publish the standards for the following year by November 30 of the preceding year, there is no provision for changing the percentage standards once they are set outside of the waiver provisions of CAA 211(o)(7). In addition, we are not required to ensure that the biofuel volumes in the statute are precisely met. We are required to use the specified volumes to set the percentage standards, but there are no provisions for ensuring that the percentage standards actually result in the specified volumes actually being consumed. This outcome is evidenced by the fact that we use projections of gasoline and diesel volume for the next year which might turn out to be too high or too low. Insofar as those projections are wrong, the percentage standards will not produce a demand for biofuels that exactly corresponds to the volumes in the statute. Thus Congress allowed for some imprecision to exist in the actual volumes of renewable fuel that are consumed as a result of the percentage standards that we set each November, and did not provide a means for correcting the percentage standards after November to ensure that the applicable volumes of renewable fuel are exactly met in a given compliance year.

3. Final Percentage Standards

As finalized in the March 26, 2010 RFS2 rule, the standards are expressed in terms of energy-equivalent gallons of renewable fuel, with the cellulosic biofuel, advanced biofuel, and total renewable fuel standards based on ethanol equivalence and the biomass-based diesel standard based on biodiesel equivalence. However, all RIN generation is based on ethanol-equivalence. More specifically, the RFS2 regulations provide that production or import of a gallon of biodiesel will lead to the generation of 1.5 RINs. In order to ensure that demand for 1.0 billion physical gallons of biomass-based diesel will be created in 2012, the calculation of the biomass-based diesel standard provides that the required volume be multiplied by 1.5. The net result is a biomass-based diesel gallon being worth 1.0 gallons toward the biomass-based diesel standard, but worth 1.5 gallons toward the other standards.[40]

The levels of the percentage standards would be reduced if Alaska or a U.S. territory chooses to participate in the RFS2 program, as gasoline and diesel produced in or imported into that state or territory would then be subject to the standard. Neither Alaska nor any U.S. territory has chosen to participate in the RFS2 program at this time, and thus the value of the related terms in the calculation of the standards is zero.

Note that the terms for projected volumes of gasoline and diesel use include gasoline and diesel that has been blended with renewable fuel. Because the gasoline and diesel volumes estimated by EIA include renewable fuel use, we must subtract the total renewable fuel volume from the total

[37] ''Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship,'' U.S. Department of Energy, March 2011.

[38] Since the standards are applied on an annual basis, the exemptions are likewise on an annual basis even though the determination of which refineries would receive an extension to their exemption did not occur until after January 1, 2011.

[39] See 75 FR 76805, December 9, 2010.

[40] 75 FR 14716, March 26, 2010.

gasoline and diesel volume to get total non-renewable gasoline and diesel volumes, as discussed earlier. The values of the variables described above are shown in Table III.B.3–2. Terms not included in this table have a value of zero.

TABLE III.B.3–2—VALUES FOR TERMS IN CALCULATION OF THE STANDARDS

[Bill gal]

Term	Value
$RFV_{CB,2012}$	0.01045
$RFV_{BBD,2012}$	1.0
$RFV_{AB,2012}$	2.0
$RFV_{RF,2012}$	15.20
G_{2012}	135.39
D_{2012}	50.68
GE_{2012}	4.87
DE_{2012}	2.28
RG_{2012}	13.31
RD_{2012}	0.93

Using the volumes shown in Table III.B.3–2, we have calculated the percentage standards for 2012 as shown in Table III.B.3–3.

TABLE III.B.3–3—FINAL PERCENTAGE STANDARDS FOR 2012

Cellulosic biofuel	0.006%
Biomass-based diesel	0.91%
Advanced biofuel	1.21%
Renewable fuel	9.23%

IV. Changes to RFS2 Regulations

As the RFS2 program got underway in the second half of 2010, we discovered that a number of regulatory provisions were causing confusion among regulated parties. In some cases the confusion was due to a lack of specificity in terms, while in others it was due to unique circumstances that were not sufficiently addressed in the RFS2 regulations. A few amendments are being finalized in order to correct these problems and to amend regulatory language that inadvertently misrepresented our intent as reflected in the preamble to the final RFS2 regulations. In addition, as we have worked with regulated parties to ensure that the RFS program is operating as intended, we identified areas in the regulations that could benefit from streamlining. We also identified one provision in the gasoline benzene regulations that misrepresented our intent as stated in the preamble. As a result, we are finalizing a number of amendments to the RFS regulations, and one amendment to the gasoline benzene regulations, in 40 CFR Part 80.

A. Summary of Amendments

Below is a table listing the provisions that we are amending in today's action. We have provided additional explanation for several of these amendments in Sections IV.B through IV.F below.

TABLE IV.A–1—SUMMARY OF TECHNICAL AMENDMENTS

Section	Description
80.1275(d)(3)	Removed to allow for the inclusion of transferred blendstocks in the calculation of benzene early credits.
80.1401	Amended definition of "annual cover crop" to clarify that the crop has no existing market to which it can be sold except for its use as feedstock for the production of renewable fuel.
80.1401	Amended definition of "naphtha" to clarify that it applies to hydrocarbons only, must be commonly or commercially known as naphtha, and is used for producing gasoline.
80.1405(a), (b), and (d)	Amended to state the standards for 2012 and the date of the annual standards calculation.
80.1405(c)	Amended terms "GE_i" and "DE_i" to reference the amount of gasoline and/or diesel produced by small refineries and small refiners that are exempt pursuant to §§ 80.1441 and 80.1442.
80.1415(c)(2)	Amended to state the specific requirements needed for technical justifications for applications for Equivalence Values.
80.1426(f)(1)	Corrected typographical error in cross reference to paragraph (f)(6) of § 80.1426.
80.1426(f)(5)(ii)	Amended requirements so that the separated yard waste plans and separated food waste plans need not be approved by EPA, but instead only need to be accepted by EPA under the registration provisions.
80.1429(b)(2)	Amended to clarify that "fossil-based" diesel fuel is different from renewable diesel fuel.
80.1429(b)(9)	Amended to include RIN separation limitations on parties whose non-export RVOs are solely related to imports of gasoline and diesel or the use of blendstocks to produce gasoline or diesel.
80.1449(a)	Amended Production Outlook Report due date; added allowance for unregistered renewable fuel producers and importers to submit Production Outlook Reports.
80.1450(d)(1)–(d)(3)	Amended to add more specificity on when updates, addenda, or resubmittals are required for engineering reviews and to include references to foreign ethanol producers.
80.1451(a)(1)(xi)	Amended to clarify that this section references RFS1 RINs retired for compliance.
80.1452(b)(2)	Corrected typographical error.
80.1452(b)(4)	Amended to clarify that a RIN-generating importer must submit to EMTS the EPA facility registration number of the facility at which the renewable fuel producer or foreign ethanol producer produced the batch.
§ 80.1452(b)(5)	Amended to clarify that for imports of renewable fuel, the RIN-generator must submit to EMTS the EPA facility registration number of the importer that imported the batch.
80.1460(b)(6)	Adds the existing prohibition against generating a RIN for fuel for which RINs have previously been generated.
80.1464(a)(2)(iii), (a)(2)(iv), (b)(2)(iii), (b)(2)(iv), (c)(1)(iii), and (c)(1)(iv).	Added to clarify that auditors must verify that product transfer documents for RIN transactions contain the required information for obligated parties/exporters and for renewable fuel producers/importers.

TABLE IV.A–1—SUMMARY OF TECHNICAL AMENDMENTS—Continued

Section	Description
80.1464(a)(2)(i), (a)(3)(ii), (b)(2)(i), (b)(3)(ii)	Amended to clarify that auditors must validate RIN separations for obligated parties/exporters and for renewable fuel producers/importers; amended to correct typographical error.
80.1465(h)(2); 80.1466(h)(2); and 80.1467(e)(1), (e)(2), and (g)(2).	Amended to remove the option of using an alternative commitment in lieu of paying a bond and to clarify the amount of bond a foreign entity must post.

There are also two changes to Table 1 to § 80.1426 that we proposed in the July 1, 2011 NPRM that we are not finalizing in today's action, but which instead will be finalized in a separate action. The first change would amend the table to include ID letters for each pathway to facilitate references to specific pathways. The second change would add ''rapeseed'' to the existing pathway that currently allows canola oil to be used as a valid feedstock in the production of biodiesel. These two changes are being finalized in a separate action in order to ensure that multiple changes to Table 1 to § 80.1426 that are made sequentially do not inadvertently result in later changes over-writing earlier changes.

B. Technical Justification for Equivalence Value Application

A producer or importer of renewable fuels is required to submit an equivalence value (EV) application in accordance with § 80.1415(c) for any renewable fuel that does not have an EV listed in § 80.1415(b). In addition, a producer or importer could apply for an alternative EV if the producer or importer has reason to believe that a different EV than that listed in § 80.1415(b) is warranted. Section 80.1415(c) provides the calculation equation for the EV of the renewable fuel and the requirements for the technical justification to be submitted in the EV application.

We have received many inquires from producers and importers of renewable fuels requesting clarification of the specific requirements for the technical justification listed in § 80.1415(c). In addition, based on the many EV applications we have evaluated, we have found that we needed to request additional information from producers and importers to better understand the composition of the renewable fuel they produced, such as intermediate steps and energy inputs in production process, sources of renewable and non-renewable feedstock, and so forth, to better evaluate and assign the correct EV to the producer or importer's renewable fuel.

Therefore, we are finalizing in this rulemaking amendments to § 80.1415(c)(2) to clarify the current requirements and to include additional requirements for the technical justification to be submitted in the EV application. The final amendments to § 80.1415(c)(2) include:

—A calculation for the requested equivalence value according to the equation in § 80.1415(c)(1), including supporting documentation for the energy content (EC) of the renewable fuel such as a certificate of analysis from a laboratory that verifies the lower heating value in Btu per gallon of the renewable fuel produced.

—For each feedstock, component or additive used to make the renewable fuel, provide a description, the percent input and identify whether or not it is renewable biomass or is derived from renewable biomass.

—For each feedstock that could independently qualify as a renewable fuel, state whether or not RINs have been previously generated for the feedstock.

—A description of renewable fuel and the production process, including a block diagram that shows quantities of all inputs and outputs required at each step of the production process for the production of one batch of renewable fuel.

We received no adverse comments on our proposed changes to § 80.1415(c)(2), and so are finalizing the changes as proposed.

C. Changes to Definitions of Terms

1. Definition of Annual Cover Crop

As explained in the preamble of the RFS2 final rulemaking, EPA extended modeling for cellulosic biofuel made from corn stover and biodiesel/renewable diesel made from waste oils/fats/greases to certain fuels made from annual cover crops, based on the expectation that cultivation of annual cover crops, as defined in § 80.1401, will have little impact on the agricultural commodity markets and therefore little or no land use impact associated with them. Therefore, certain fuels (as specified in Table 1 to § 80.1426) derived from annual cover crop feedstocks qualify for D-codes under the advanced biofuel, biomass-based diesel, and cellulosic renewable fuel categories.

Section 80.1401 of the final RFS2 rule defines ''annual cover crop.'' We proposed to amend the definition of annual cover crop in order to more clearly define those feedstocks that meet the intent of including cover crops in several pathways in Table 1 to § 80.1426.

As explained in the proposal, in order to extend our modeling to cover crops, we used the rationale that annual cover crops would have no indirect land use impact since they are planted on land otherwise used for crop production. Direct greenhouse gas emissions would only be associated with growing, harvesting and transporting the cover crop, and then processing into biofuel. (See 75 FR 14794 col. 3.) These direct impacts could include requiring the farmer to use more commercial fertilizer in compensation for removing cover crops that would have been plowed into the field, or in decreasing yield of food crops. However, our determination that cover crops qualified for D-codes under the advanced biofuel, biomass-based diesel, and cellulosic renewable fuel categories was based on the fact that they did not have any indirect impacts. Thus, we assumed that no additional land would be required to plant annual cover crops, that cover crops would not displace primary crop production, and that the use of the cover crop as a feedstock for renewable fuels would not have secondary impacts on other agricultural commodity markets. This implies that annual cover crops would not be planted and harvested for the purpose of being sold to existing markets. If a cover crop already had an existing market, then the increased use of cover crops as feedstocks for renewable fuel production could potentially impact the existing markets. Therefore, we proposed to amend the current definition for ''annual cover crop'' to clarify that for purposes of the RFS program the term only includes crops that have no existing market to which they can be sold except for the use of the feedstock for renewable fuel. This will ensure that no unintended land use or significant indirect effects result from the use of annual cover

crops as feedstocks for renewable fuel production.

Several parties commented against this change, stating that it is too restrictive and thus would prevent some crops they considered cover crops from qualifying as eligible feedstock under the RFS2 program. While this change clarifies that crops having existing market impacts would not qualify as cover crops, such exclusion is consistent with the basis for including the cover crop provision. EPA determined that crops with no market value could be planted on land without any expected impact on other crops and thus no expected indirect land use impact. This amendment clarifies that only crops with no market impact can qualify as cover crops and is consistent with the underlying analysis. However, even if a crop does not qualify under this revised cover crop definition, that does not prevent it from being included as an eligible feedstock under the RFS2 program. As stated in the proposal, EPA recognizes that there may be additional fuel pathways requiring lifecycle greenhouse gas (GHG) assessments and the assignment of appropriate RIN D–Codes, including those using feedstocks that do not meet the proposed amended definition of annual cover crop. For further guidance on the process for requesting EPA evaluation of new fuel pathways, please refer to the following sites:

http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfs2-lca-pathways.htm

http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/lca-petition-instructions.htm#1

2. Definition of ''Naphtha''

In the RFS2 final rule, we included several RIN-generating pathways in Table 1 to § 80.1426 for naphtha made from renewable biomass. We also provided a definition of naphtha in § 80.1401. However, the definition we finalized was overly broad and did not adequately represent our intent to limit naphtha to gasoline blendstocks. As a result, some biofuel producers have expressed interest in interpreting the term ''naphtha'' to include materials that, while falling within the boiling range of gasoline, are not used as a blendstock to produce gasoline.

To remedy this situation, we proposed to revise the definition of naphtha to also specify that it applies only to blendstocks which are composed of only hydrocarbons, are commonly or commercially known as naphtha, and are used to produce gasoline. We received no adverse comments on this proposal, and so are finalizing it as proposed.

D. Technical Amendments Related to RIN Generation and Separation

1. RIN Separation Limit for Obligated Parties

We proposed to amend section § 80.1429(b)(9) to limit the amount of RINs a company who is an obligated party solely by virtue of importation of obligated fuel can separate to meet their Renewable Volume Obligation (RVO). This proposal was designed to prevent abuse of the obligated party RIN separation provision by a company that imports a relatively small amount of an obligated volume, but then separates a large amount of RINs. It was also designed to help prevent hoarding of RINs by parties that do not need them for compliance purposes, and to generally increase the liquidity of RINs. EPA structured the original RFS1 separation regulations around facilitating compliance by obligated parties who must acquire RINs to meet their RVOs. This change is consistent with the original design and also ensures that importers can separate enough RINs to meet their obligations. Overall, commenters were against this amendment with many companies indicating that they are currently taking advantage of the ability to separate all RINs in their possession if they are an obligated party solely related to their gasoline and/or diesel imports, and that they wish to continue to do so.

One commenter opposed this change, stating that the RIN life limitation would prevent hoarding. EPA does not agree with this; the life of a RIN prevents use for compliance after a designated amount of time, see § 80.1447(a)(6), this does not provide an adequate mechanism to prevent hoarding of RINs.

Several commenters stated that the carryover provisions prevent RIN hoarding. EPA does not agree; the carryover provisions, § 80.1428(a)(5), refer only to the ratio of assigned RINs to volumes of renewable fuel owned at the end of a quarter. There is no limit on the amount of separated RINs that a party may own at the end of a quarter.

Several commenters stated that market liquidity would decrease if obligated importers could not separate all RINs that they own. They also stated that RINs will be held by fewer obligated parties. We believe that market liquidity would not be decreased; RIN separation would still occur according to § 80.1429 and obligated parties would still have access to the separated RINs needed for compliance. In fact, to the extent that the provision prevents RIN hoarding, as intended, it should increase RIN liquidity. EPA has determined that this will not change or limit who can participate in the RFS program or become an obligated party; it will only limit the number of RINs that certain importers can separate. In addition, these obligated importers and any other RIN owning party can separate RINs without being subject to the limitation in § 80.1429(b)(9) for any of the reasons outlined in § 80.1429(b)(2)–(b)(5) and (b)(8).

One commenter was concerned about how an obligated importer would know how many RINs they could separate for ''receipt of fuel by an obligated party'' noting that they will not know their exact RVO until the end of the compliance year. EPA believes that obligated importers should separate RINs on the basis of ''receipt of fuel by an obligated party'' only to the extent necessary to meet their existing obligation.

One commenter felt that the proposed amendment would limit the actual capacity of an importer to introduce a volume of renewable fuel into the marketplace. EPA does not agree with this statement and believes that limiting RIN separation using the reason ''receipt of fuel by an obligated party'' would not reduce the amount of renewable fuel that is in demand and may be sold.

One commenter requested confirmation of the following statement: ''this change would, in no way, limit the right of a company to separate RINs from renewable fuel if that entity is acting as a blender and blending renewable fuel into transportation, heating fuel or jet fuel.'' EPA confirms the previous statement with one clarification. Amended § 80.1429 applies ''except as provided in paragraphs (b)(2) through (b)(5) and (b)(8).'' Since the obligation for blenders to separate RINs for renewable fuel that they blend to produce a transportation fuel, heating oil or jet fuel appears in (b)(2), the limitations in (b)(9) are not applicable to RIN separations pursuant to that provision. We clarify, however, that (b)(2) applies to blending ''to produce'' a transportation fuel, heating oil or jet fuel. For example, blending biodiesel at a rate of 5% into motor vehicle diesel fuel would produce a transportation fuel.

One commenter indicated that this method of separation helped companies that did not want to be involved with the RFS program; allowing obligated importers to transfer renewable fuel without RINs and not violating the quarterly check outlined in

§ 80.1428(a)(5). EPA notes that all parties have the ability to separate up to 2.5 RINs per gallon pursuant to § 80.1429. This amendment, which will limit obligated importers' ability to separate RINs, would not change this feature. This provision could facilitate the transfer of fuel with separated RINs to parties not wishing to receive RINs. Also, small blenders have the ability to delegate all RIN related responsibilities to the party directly upstream as long as they are blending less than 125,000 gallons of renewable fuel per year (§ 80.1440). In addition to separating up to their RVO, obligated importers and any other RIN owning party can separate for any of the reasons outlined in § 80.1429(b)(2)–(b)(5) and (b)(8) without being subject to the limitation in (b)(9).

One commenter argued that the ability to separate as an obligated importer allowed them more flexibility with RIN transfer dates. EPA believes that this implies that the party uses its ability to separate to avoid the requirement in § 80.1428(a)(3) ''an assigned RIN cannot be transferred to another person without simultaneously transferring a volume of renewable fuel to that same person.'' The commenter indicated that a reason for becoming an obligated importer is to be able to separate all RINs and avoid the previously referenced regulatory requirement. This also allows them to remain in compliance with the EMTS transaction reporting time frames laid out on § 80.1452(c). EPA believes that transfer date and the ability to transfer separated RINs without renewable fuel are not relevant to this amendment. The commenter's use of the provision is counter to how the program was set up to ensure the distribution of RINs and could be used not only to slow the transfer of RINs downstream to the blender or final user of the renewable fuel, but also allow hoarding. The commenter also stated that there is no requirement to report physical fuel inventory and number of assigned RINs (§ 80.1428(a)(5)). EPA has determined that this statement is not accurate pursuant to § 80.1451. Currently, § 80.1451(c)(2)(xiv), requires the volume of renewable fuel owned at the end of the quarter. This volume must meet the requirements of § 80.1428(a)(5).

EPA believes that while commenters were mainly against the amendment, specific arguments presented supported EPAs reason for the amendment. For the reasons stated above, we are finalizing the regulatory changes as proposed.

2. RIN Retirement Provision for Error Correction

As we stated in the proposal, in some instances, renewable fuel producers or importers may improperly generate RINs in EMTS as a result of calculation errors, meter malfunctions or clerical errors. Pursuant to § 80.1431(a), improperly generated RINs are invalid, and cannot be used to achieve compliance with any Renewable Volume Obligations (RVOs).

EPA sought comment on the possibility of amending § 80.1431 to provide the regulated community with limited flexibility to allow certain RINs that were improperly generated to nevertheless be transferred and used for compliance, provided the RIN-generator retires equivalent RINs (the same quantity and fuel category (D-code) of RINs with the same RIN year) in order to make the market whole.

We sought comment on whether EPA should amend the regulations to include the flexibility for EPA to allow improperly generated RINs to be used for compliance, whether the conditions set forth in the proposal were appropriate, and whether there are additional or alternative conditions that should be imposed if the flexibility were to be granted. We proposed that the following general limitations should apply to any flexibility to allow improperly generated RINs to be transferred and used for compliance: (1) The RINs must have been improperly generated as a result of an inadvertent error, (2) the improperly generated RINs must have the correct D code, (3) the RIN generator must correct the information submitted to EMTS and retire an equivalent number and type of any excess RINs that were generated as a result of the error within a fixed time period of 60 days, (4) the flexibility to allow improperly generated RINs to be used for compliance would only apply if the number of excess RINs generated for a particular batch exceeds the number of RINs that should have been generated by no more than two percent, and (5) the flexibility to allow improperly generated RINs to be used for compliance should be limited to a certain number of times per year per RIN generator.

We received several comments in support of providing EPA with some sort of flexibility to allow improperly generated RINs to be used for compliance, and a few comments that did not support EPA providing any flexibility of this type. Supporters of the flexibility believe that this flexibility is necessary for good faith RIN generators who have made inadvertent mistakes. They argue that the flexibility will avoid time spent by both EPA and regulated parties tracking invalidly generated RINs to their current owner when equivalent RINs could be retired to make the system whole. Commenters believe EPA's time is better spent investigating more egregious violations. Many supporters of the flexibility, however, believe that, given the proposed limitations, the proposed flexibility would be too narrow. Commenters believe that EPA should take into consideration the totality of the circumstances, including the number of RINs/percent of the batch that are invalid, the frequency of improper generation on the part of the producer and indications of good faith mistake when determining whether to allow the flexibility for improperly generated RINs to be used for compliance, rather than imposing strict limitations on the use of the flexibility.

EPA believes that providing this type of flexibility will reduce disruptions to the RIN market while continuing to apply appropriate pressure on parties that generate, transfer and use RINs to comply with the regulations. However, EPA disagrees with the commenters that advocated that the flexibility should be unlimited. EPA believes that by limiting the use of this flexibility, RIN generators are provided an incentive to implement and utilize measures and controls to ensure the validly of information sent to EMTS in a more timely manner. Therefore, in today's rule in 80.1431(c) and (d), EPA is finalizing an approach that provides flexibility to RIN generators to retire equivalent RINs in situations where they have over-generated RINs on a batch due a broken meter, an inadvertent temperature correction error, or an inadvertent administrative error. This flexibility may only be used under certain conditions, though, in order to mitigate harm to the RIN market, as specified in the regulations and discussed in detail below.

Some commenters supported the proposed 60-day time allowance for a RIN generator to correct RIN generation information submitted to EMTS. The commenters believe 60 days is sufficient to identify and correct inadvertent mistakes, and the time limit provides an incentive for the regulated community to regularly verify that RINs have been correctly generated. On the other hand, another commenter thought that the correction period should be longer than 60 days. One commenter suggested 18 months for RIN generators to notify EPA of improperly generated RINs at which point EPA would determine whether to allow those invalid RINs to be used for

compliance. The commenter believed this would allow invalid RINs to be discovered during the attest audit conducted each year concerning the renewable fuel producer's compliance records.

Additionally, commenters generally disagreed with EPA's proposal to limit the flexibility to situations where the number of excess RINs generated for a particular batch exceeds the number of RINs that should have been generated by no more than 2%. Commenters argued that a simple typing error in any digit can easily result in an over-generation that far exceeds 2%. One commenter suggested that the number of RINs eligible for the flexibility be limited to no more than 2% of a specific RVO category (e.g. Cellulosic Biofuel, Advanced Biofuel, etc.) for any given year. Another suggested that there is no reason to limit the flexibility this way, and that EPA should maintain discretion to determine when invalid RINs can be used for compliance, regardless of what percentage of the RIN batch is invalid. The commenter states that there is no reasonable equitable basis for limiting the availability of the flexibility to situations involving an error of no more than 2%, since there can be significant variability in the size of renewable fuel batches; for example, 2% of a large batch could consist of more RINs than an entire batch for a smaller facility.

In today's final rule, EPA did not limit the ability to use the flexibility to a certain number of RINs or percentage of a batch as proposed because we agree with commenters' suggestion that a simple typing or meter error may result in a large number of excess RINs just as easily as it could result in an error that constitutes only a small number of RINs. EPA's decision to eliminate the two percent limitation may result in more regulated parties taking advantage of the flexibility created by this rule. Nevertheless, EPA is limiting the use of the flexibility to situations in which RIN generators who improperly over-generated RINs on a batch fit certain criteria, including taking remedial action to retire equivalent RINs within 30 days of the original invalid RIN generation submission in EMTS, as specified in 80.1431(c)(7). EPA believes that it is appropriate to require RIN generators to correct the information submitted to EMTS within 30 days to encourage the regulated community to take prompt corrective action, which will aid in maintaining market integrity. EPA believes that limiting the amount of time that RIN generators are afforded to avail themselves of this flexibility is necessary to provide an incentive to RIN generators to conduct timely internal inspections of their RIN generation activities in order to ensure that RINs are properly generated and the accuracy of RIN information in EMTS.

We also sought comment on the possibility of establishing a limit on the number of times this flexibility could be requested within a compliance period by a given RIN generator. We stated that we believe such a limitation could encourage RIN generators to take appropriate measures to avoid generating invalid RINs, and limit the possibility that RIN generators would intentionally generate invalid RINs to take advantage of short term RIN price spikes. Some commenters argued that there should not be a limit on the number of times a RIN generator can request EPA allow them to use the flexibility, but that if a particular company regularly generates RINs improperly, that company should be penalized on a case-by-case basis, taking into account whether the error was truly a mistake made in good faith.

EPA disagrees with commenters' belief that RIN generators should have unlimited access to these flexibilities. EPA believes that the flexibility should be limited to a set number (namely, five) of improperly generated batches per year and is finalizing regulations to that effect in 80.1431(c)(6). By limiting the number of times a RIN generator may utilize the flexibility to retire equivalent RINs, the regulations will encourage RIN generators to implement robust measures and controls to prevent errors from occurring, knowing that the flexibility is only available to them for five batches each compliance year. Additionally, limiting the number of batches to which this flexibility can be applied restricts the ability of RIN generators that might otherwise intentionally generate invalid RINs to take advantage of short term RIN price spikes.

Finally, EPA is finalizing a provision informing the regulated community that EPA intends to publicly post information concerning RIN generators utilizing this flexibility in 80.1431(c)(7)(B). By posting this information, EPA is assisting obligated and other regulated parties in their due diligence to ensure compliance with all RFS2 regulations. EPA believes that posting information concerning the use of this flexibility will incentivize proper RIN generation in the future.

Further, EPA may remove improperly generated RINs from EMTS if the RIN generator has failed to properly meet the remedial action requirements stated in the regulations, as specified in 80.1431(d). EPA believes this will prevent invalid RINs that do not meet the requirements in 80.1431(c) from propagating through the market and being used for compliance purposes, thus preventing additional violations. While EPA is aware that the proposal did not include the ability to remove improperly generated RINs, EPA believes this ability is a logical outgrowth from the comments that EPA should spend more time investigating egregious violations. This provision will allow EPA to quickly remove from the market those RINs reported by the RIN generator to be invalid due to reasons in 80.1431(c)(2), thus affording EPA more time to spend investigating egregious violations.

Finally, a number of commenters noted that good faith purchasers and the ultimate users of the RINs, the obligated parties, should not be subject to a violation for unwittingly buying and/or retiring invalid RINs for compliance. EPA disagrees, and believes that the ''buyer beware'' aspect of the RIN trading program is one of the cornerstones of the program. It provides an important incentive for the regulated community to comply with the regulations and mandates due diligence on the part of all RIN buyers. It encourages self-policing on the part of RIN generators, owners and users in order to keep the program functioning smoothly. EPA is not making any changes to the liability sections of RFS2 as a result of these comments and although today's rule will allow obligated parties to use some invalid RINs for compliance, the obligated parties and any intermediary party are still liable for buying and/or transferring invalid RINs.

3. Production Outlook Reports Submission Deadline

In the final RFS2 regulations, in § 80.1449(a), EPA set the annual deadline for submitting Production Outlook Reports as March 31 of each year. However, EPA has determined that, in order for the information contained in the Production Outlook Reports to be most useful when setting the RFS2 volume requirements and associated percentage standards for the following calendar year, the reports should contain the most accurate projections possible. Since the accuracy of projections tends to increase the closer those projections are made to the following calendar year, we proposed that the March 31 deadline should be moved to June 1. This revised deadline would still allow the information contained in the Production Outlook Reports to be used in the development

of the final rulemaking setting the standards for the following year.

We received one comment on the proposed Production Outlook Reports deadline of June 1 that suggested August 31, or as late as possible that still ensures the information is useful in the development of the final RFS standards for the following year. EPA believes, however, that if the deadline is set later in the year, there would be insufficient opportunity for EPA to quality check the incoming data prior to incorporating it into the analysis for developing the RFS2 volume requirements and associate percentage standards for the following calendar year. EPA strives to make the most accurate projections possible, so without time to check the data quality, there could be inaccuracies in the volume requirements that lead to market disruption.

Another commenter suggested that having the Production Outlook Reports deadline immediately after the May 31 attest engagement deadline would place a significant burden on regulated parties at that time, and suggests a deadline of June 30 for the Production Outlook Reports. EPA believes that it is not a significant burden for regulated parties to submit the Production Outlook Report at the same time as the attest engagement report, especially considering the attest audit and report are typically conducted by independent third-party auditors, rather than the regulated parties themselves.

For the reasons stated above, EPA believes that the proposed June 1 deadline for Production Outlook Reports is reasonable and should not be moved to later in the year. Therefore, EPA is finalizing the June 1 deadline for Production Outlook Reports.

4. Attest Procedures

In the final RFS2 regulations, EPA required in § 80.1464(c)(1)(i) and (c)(2)(ii) that RIN owners conduct attest procedures for RIN transaction and RIN activity reports that involve RIN separations. This requirement was intended to be included in the attest procedures for obligated parties and exporters as well as for renewable fuel producers and RIN-generating importers, in order to confirm that RINs are being properly separated by all parties participating in the RIN market. Thus, we proposed amendments to § 80.1464(a)(2)(i) and (a)(3)(ii) for obligated parties and exporters as well as to § 80.1464(b)(2)(i) and (3)(ii) for renewable fuel producers and RIN-generating importers to include attest procedures concerning verification of RIN separation.

Additionally, in the final RFS2 regulations, EPA required in § 80.1464 that auditors of RIN generation reports verify that product transfer documents (PTDs) include the required information. EPA believes it would be beneficial for auditors to verify the required information is present on PTDs for RIN transactions for all parties, including obligated parties, renewable fuel producers and importers and RIN owners. Thus, we proposed amendments to § 80.1464(a)(2), (b)(2) and (c)(1) to require auditors to verify that the PTDs for a representative sample of RINs sold and purchased contains the information required in § 80.1453.

We received one comment that stated that the attestation procedures should be comparable for all reporting activities of all regulated parties. EPA believes, however, that the proposed regulatory changes to the attest engagement procedures apply consistently to all regulated parties in that all parties are responsible for ensuring that RINs that they separate, purchase or use for compliance have been properly separated and that they have associated PTDs with all of the required information. Another commenter states that obligated parties should not be required to audit RIN separation activities in addition to RIN purchases. Again, EPA feels this additional check on RIN separation activities will ensure that the RINs are properly separated and that renewable fuel is actually being blended for use as transportation fuel, heating oil or jet fuel. Therefore, EPA is finalizing the amendments to the attest engagement procedures as proposed.

E. Technical Amendments Related to Registration & Recordkeeping

1. Construction Discontinuance & Completion Documentation

The registration requirements in § 80.1450(b)(1)(vi) state that for facilities claiming the exemption described in § 80.1403(c) or (d), evidence must be submitted demonstrating the date that construction commenced. However, the registration requirements do not explicitly require the submission of evidence demonstrating that they meet the other requirements described in § 80.1403(c)(1) and (2) or (d)(1), (2) and (3).

In order to verify that facilities which claim to qualify for an exemption under § 80.1403(c) or (d) in fact meet all of the qualification requirements for such an exemption, we proposed to amend § 80.1450(b)(1)(vi) to include requirements that the owner or operator of facilities claiming exemption under § 80.1403(c) submit evidence demonstrating that construction was not discontinued for a period of 18 months after construction began, and that construction was completed by December 19, 2010. Similarly, we proposed that for facilities claiming the exemption under § 80.1403(d), evidence be submitted demonstrating that construction was not discontinued for a period of 18 months after construction began and that construction was completed within 36 months of the commenced construction date.

We received comments that EPA should not adopt these proposed amendments because the requirements would be overly burdensome and unnecessary due to the fact that the majority of all facilities that have claimed the exemption under § 80.1403 have already been registered and therefore these amended requirements would have no effect on these facility's registration. Secondly, the commenter stated that the proposed requirement to submit evidence that construction was not discontinued for a period of 18 months is unreasonable because it is unclear how a facility could prove a lack of construction activity. Thirdly, the commenter stated that the proposed amendment to submit evidence that construction was timely completed was unnecessary because a facility's operation activity such as production of fuel was enough to serve as evidence that construction was completed. The commenter suggested that EPA only request evidence to demonstrate that these requirements are met from facilities that EPA believes did not rightly claim the exemption under § 80.1403.

In order to fully assess the concerns raised by the commenters, EPA has decided to investigate this issue in more detail and analyze some additional options. Therefore, at this time, EPA is not taking final action with respect to this proposed amendment.

2. Third-Party Engineering Reviews

The regulations stipulate that producers of renewable fuels and foreign ethanol producers are required to update their registration information, and submit an updated independent third-party engineering review, every 3 years after their initial registration in accordance with § 80.1450(d)(3). We have received many inquiries regarding the start date that EPA uses to determine the 3 year period after which the producer must submit an updated independent third party engineering review (such as the registration acceptance date, the third-party professional engineer's signature date

on the engineering review report, or the due date for engineering reviews.

Given the lack of clarity in the current regulations, we proposed amendments to specify the time frame for submission of updated independent third-party engineering reviews which included a simplified method that would group producers according to the calendar year they were or will be registered, and set a fixed time frame for registration updates for each group. We proposed to amend § 80.1450(d)(3) to stipulate that for all producers of renewable fuel and foreign ethanol producers for which registration was accepted by EPA in calendar year 2010, that the updated registration information and independent third-party engineering review would be submitted to EPA within the three months prior to January 1, 2014, and within three months prior to January 1 of every third calendar year thereafter. For all producers of renewable fuel and foreign ethanol producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review would be submitted to EPA within three months prior to January 1 of every third calendar year after the first year the producer's registration was accepted by EPA. For example, a producer registered in 2011 would be required to submit an updated independent third-party engineering review by January 1, 2015, and by January 1 every three calendar years thereafter.

We received comments that supported the adoption of the proposed amendments for a simplified method of grouping producers according to the calendar year that they were or will be registered to determine the due date for submission of the updated registration information and independent third-party engineering review. The commenter suggested that we provide a clear method to determine the due date for individual facilities to further help with the compliance of this requirement. We agree with the commenter that providing more clarity and guidance would help facilities comply with this requirement. Therefore, in the near future and well before the due date for any updated engineering reviews, we plan to compile and publish a guidance document that will provide the date in which each facility's registration was accepted, the calendar year in which each facility will be grouped, and the corresponding triennial due dates for the updated engineering review for each calendar year group. This guidance document will be published on the RFS public Web site. Parties must also comply with all other applicable requirements in 40 CFR Part 80, Subpart M. This guidance does not, in any way, alter the requirements of the renewable fuel program regulations, and does not establish or change legal rights or obligations.

In addition, we are removing from the final rule the proposed 3 months allowance period prior to triennial due date. The reason we included a 3 months allowance was to ensure that the updated engineering reviews were not submitted so early as to not provide appropriately updated information as of the three-year submission deadline. We believed at the time of the proposal that the inclusion of the 3 month window would ensure that facilities conduct their engineering review closer to the end of the 3 year period, which we assumed would provide the most up-to-date information. However, now we believe that the inclusion of this 3 month period is unnecessary since the owners or operators of a facility can determine for themselves when it is appropriate to coordinate and conduct the engineering review for their facility and that the regulatory requirement for ''updated'' engineering reviews provide sufficient clarity that the information submitted to EPA must reflect the up-to-date information.

Therefore, we are finalizing in this rulemaking the proposed simplified method to group facilities based on the calendar year in which their facility's registration was accepted by EPA with the due date for the updated registration and independent third party engineering review to be submitted to EPA by January 31st of every 3 calendar years, starting from the acceptance date of the facility's initial registration. We are allowing the engineering reviews to be submitted at the end of January due to possible scheduling concerns during the holiday season.

3. Foreign Ethanol Producers

We proposed that the amendments to the registration requirements in § 80.1450 also apply to foreign ethanol producers. As defined in § 80.1401, foreign ethanol producers are foreign producers that produce ethanol for use in transportation fuel, heating oil or jet fuel but who do not add denaturant to their product. Therefore, foreign ethanol producers do not technically produce ''renewable fuel'' as defined in our regulations. As discussed in the preamble to the Direct Final Rule published on May 1, 2010 (see 75 FR 26032), the result of the amendments made in the Direct Final Rule is to require foreign ethanol facilities that produce ethanol that ultimately becomes part of a renewable fuel for which RINs are generated to provide EPA the same registration information as foreign renewable fuel facilities that export their product to the United States. In both cases the required registration information is important for enforcement purposes, including verifying the use of renewable biomass as feedstock and the assignment of appropriate D codes. Therefore, we believe amendments to the registration requirements that we make in this final rule should also be applicable to foreign ethanol producers for the same reasons. We did not receive comments on this proposed change, so we are finalizing the amendment as proposed.

F. Additional Amendments and Clarifications

1. Third-Party Engineering Review Addendum

We have received many inquires as to whether an addendum to the existing independent third-party engineering review is sufficient to meet the requirement that all producers of renewable fuel and foreign ethanol producers submit an updated independent third-party engineering review if they make changes to their facility that will qualify the renewable fuel that is produced for a renewable fuel category or D code that is not already reflected in the producer's registration information. In some circumstances the majority of the information verified in the existing independent third-party engineering review would remain the same, and duplicating the entire effort does not appear necessary. We believe the concept of allowing the submission of an addendum in lieu of a updated independent third-party engineering review is reasonable and therefore we are finalizing to amend the requirements in § 80.1450(d)(1) to state that a producer of renewable fuel or foreign ethanol producer may submit an addendum to the existing independent third-party engineering review on file with EPA provided the addendum meets all the requirements in § 80.1450(b)(2) and verifies for EPA the most up-to-date information at the producer's existing facility. The updated independent third-party engineering review or addendum shall be submitted at least 60 days prior to producing the new type of renewable fuel and must meet all the same requirements stipulated in § 80.1450(b)(2) for the independent third-party engineering review, including a new site visit conducted by the third party to verify any changes to the facility that allows it

to produce a different renewable fuel that is not currently reflected in their registration on file with EPA.

2. RIN Generation for Fuel Imported From a Registered Foreign Producer

In RFS2, EPA finalized provisions allowing importers to generate RINs for renewable fuel imported from a foreign producer only under certain circumstances. The importer may only generate RINs for fuel imported from a foreign renewable fuel producer or foreign ethanol producer if that producer is registered with EPA and has received EPA company and facility identification numbers pursuant to § 80.1450. Pursuant to § 80.1426(c)(4), the importer is prohibited from generating RINs for fuel imported from a foreign producer that is not registered with EPA. In the proposed rulemaking, EPA proposed to clarify that when an importer is generating RINs for fuel imported from a registered foreign renewable fuel producer or foreign ethanol producer, the importer must submit to EPA via EMTS the importer's company identification number, the facility identification number of the import facility where the batch was imported, and the facility identification number for the foreign renewable fuel or ethanol producer that produced the batch of fuel for which the importer is generating RINs. EPA did not receive comments on these clarifications, and is therefore finalizing them as proposed in § 80.1452(b)(4) and (5).

3. Bond Posting

We proposed to amend paragraphs (e)(1), (e)(2) and (g)(2) of § 80.1467 to make them consistent with § 80.1467(g)(1). These proposed amendments were intended to clarify that the amount of the posted bond must cover the number of gallon RINs that are sold and/or transferred, and also those RINs held and/or obtained by the foreign entity, including those held and/or obtained to comply with a foreign importer's RVO requirements. We also proposed to amend §§ 80.1465–80.1467 by striking §§ 80.1465(h)(2)(iii), 80.1466(h)(2)(iii) and 80.1467(e)(2)(iii), which allowed entities to make alternative commitments in lieu of posting bonds. EPA believes that this method is vague, unnecessary, and unenforceable.

One commenter at the hearing is against the removal of the regulation allowing foreign producers to make alternative commitments as it may discourage foreign renewable fuel producers from entering the U.S. market. EPA disagrees as no foreign producer has used an alternative commitment to date, and most foreign renewable fuel producers do not post bonds and instead rely on the renewable fuel importers to generate RINs for renewable fuel that is imported. For those reasons and the reasons described above, we are finalizing the proposed changes to the bond posting regulations as proposed.

4. Prohibition Against Repeat Generation of RINs

We are finalizing our proposal to add a new paragraph (b)(6) to the prohibited acts of § 80.1460 to specify in this section of the regulations that RINs may not be generated for any fuel for which RINs have previously been generated. Pursuant to § 80.1401, a RIN is a unique number generated to represent a volume of renewable fuel. If more than one RIN is generated for a particular volume, the RIN will no longer be unique, and is therefore improperly generated and cannot be used to demonstrate compliance with the renewable volume obligations. While generating RINs for a particular volume of fuel for which RINs have already been generated is already prohibited, we are amending the regulations to include this prohibition in § 80.1460 for clarity.

5. Acceptance of Separated Yard Waste and Food Waste Separation Plans

We proposed to amend § 80.1426(f)(5)(ii)(A) to remove the requirement that the separated yard waste plan and separated food waste plan must be approved by EPA, and instead only require that these two plans be submitted and accepted by EPA under the registration procedures specified in § 80.1450(b)(1)(vii). The details and information required to be submitted in the separated yard waste plan and separated food waste plan are not overly burdensome or complex, and therefore we believe it does not warrant a specific EPA approval, but that EPA acceptance of these plans through the registration procedures is sufficient.

We received comments that supported the adoption of this amendment for separated food waste plan and separated yard waste plan. We also received comments suggesting that we also adopt this amendment for the separated MSW plan. The commenter stated that although the separated MSW plan requires somewhat more information than the separated yard and food waste plans, the same logic applies in that the separated MSW plan will also be subject to EPA review as part of the producer's registration process and therefore requiring a separate duplicate approval for the separated MSW plan is not necessary.

First, we would like to clarify that there is not a duplicate approval process for the separated MSW plan that serves as a separate additional requirement for the producer's registration. Similar to the proposed acceptance process for the producer's separated yard and food waste plan, the approval process for the producer's separated MSW plan will equally serve as verification of compliance as part of the producer's registration. Secondly, we disagree with the commenter that the separated MSW plan only requires somewhat more information than the separated yard and food waste plans, and that the same logic applies in terms of the review process. For the separated MSW plan, producers are required to provide ongoing verification that there is separation of recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass wastes to the extent reasonably practicable, including: The extent and nature of the recycling that occurred prior to receipt of the waste material, identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream, and identification of the technology or practices selected for implementation, including an explanation for such selection, and reasons why other technologies or practices were not implemented. In addition, producers are also required to provide contracts relevant to materials recycled from municipal waste streams and certification that recycling is conducted in a manner consistent with goals and requirements of applicable State and local laws relating to recycling and waste management as part of their registration process. For the separated yard and food waste plan, the producers are only required to provide ongoing verification that the separated yard waste or food waste was kept separate since generation from other waste materials, and for food waste, contain only incidental amounts of other components. We believe the information submitted in the separated MSW plan will be considerably more complex than information submitted in the separated yard and food waste plans, and therefore, will require EPA conduct a much more comprehensive review and also consider many additional factors to ensure that the producer has met the all the requirements stipulated. Based on the factors discussed, we believe that it is not reasonable to apply the same proposed acceptance process for separated yard and food waste plan to the separated MSW plan.

Therefore, we are finalizing in this rulemaking only for separated yard waste plan and separated food waste plan to amend the requirement that the plans must be approved by EPA, and instead only require that the plans will be accepted by EPA under the registration procedures specified in § 80.1450(b)(1)(vii).

6. Transferred Blendstocks in Early Benzene Credit Generation Calculations

Today's rule also finalizes one minor correction to the gasoline benzene regulations which would clarify how refiners should account for transferred blendstocks in their early benzene credit generation calculations. Under current rules, refineries which generated early benzene credits are required to reduce gasoline benzene during an early credit generation period by at least 10% compared to the refinery's benzene baseline, and are also required to make specific operational changes and/or improvements in benzene control technology to reduce gasoline benzene levels.[41] Refineries which reduce their gasoline benzene by at least 10%, in part by transferring reformate to another refinery, could also generate early benzene credits, provided the transferee refinery treated the reformate in specific benzene-reduction processing units.[42] See 72 FR 8486–87 (Feb. 26, 2007). However, the gasoline benzene regulations also contain an additional provision that requires all blendstock streams transferred to, from or between refineries to be excluded from a refinery's early credit generation calculations (except for reformate as described previously). This led to an inconsistent comparison of a refinery's benzene during an early credit generation period with a refinery's benzene baseline (which included blendstocks transferred to the refinery), which was not EPA's intent.

As described in the preamble of the gasoline benzene final rule, EPA intended that refineries not be allowed to generate early benzene credits exclusively through blendstock trading, without making any other qualifying reductions (see 72 FR 8487), but that refineries could generate early benzene credits in part through qualifying reductions and ''in part'' through other means such as blendstock transfers (see 72 FR 8496–97). However, the current regulations do not allow this approach, and this inconsistency has caused confusion among refiners about how to calculate the amount of early credits generated. Refiners have generally followed the approach set out in the preamble (as EPA in fact intended), and included all blendstocks transferred to a refinery in the refinery's early credit generation calculations. Refiners typically keep records on transferred blendstocks for 1–2 years, and thus do not have sufficient data to exclude transferred blendstocks from their early credit generation calculations.

EPA recently became aware of this inconsistency and is amending the regulations to make them consistent with EPA's intent as described in the preamble. This rule amends the gasoline benzene regulations at 40 CFR 80.1275(d)(3) by deleting that provision. This will allow a refinery to include blendstocks transferred to the refinery in the refinery's early benzene credit generation calculations (all other conditions, including treatment which removes benzene in transferred reformate streams still applying, of course). Consistent with EPA's original intent, today's rule also allows a refinery to include transferred blendstocks in past early credit generation calculations, provided the refinery met all of the other requirements for generating early benzene credits. EPA is finalizing this change to include transferred blendstocks in past early credit generation calculation not only because this was EPA's intent at the time of the benzene gasoline rulemaking, but because some refiners have reasonably relied upon that stated intent in devising their compliance strategies.

All of the comments received on this change to the regulations were in support of this change. Commenters generally noted that the change was needed in order to align the language in the regulations with the intent stated in the preamble.

V. Annual Administrative Announcements

In the RFS2 final rule, we stated our intent to make two announcements each year:

- Set the price for cellulosic biofuel waiver credits that will be made available to obligated parties in the event that we reduce the volume of cellulosic biofuel below the applicable volume specified in the Clean Air Act (CAA), and
- Announce the results of our annual assessment of the aggregate compliance approach for U.S. planted crops and crop residue.

The biofuel waiver credit price being announced today was calculated in accordance with the specifications in § 80.1456(d). Since the manner in which EPA calculates the waiver credit price is precisely set forth in EPA regulations (which were issued through a notice-and-comment process), and since some of the variables necessary to compute the price have only recently become available, EPA did not propose a waiver credit price for comment. Similarly, because EPA's assessment of the aggregate compliance approach announced today was conducted using data sources, methodology, and criteria that were identified and explained in the preamble to the RFS2 final rule, it was not necessary to present a preliminary annual assessment for comment in the NPRM.

A. 2011 Price for Cellulosic Biofuel Waiver Credits

Section 211(o)(7)(D) of the CAA requires that whenever EPA sets the applicable volume of cellulosic biofuel at a level lower than that specified in the Act, EPA is to provide a number of cellulosic credits for sale that is no more than the EPA-determined applicable volume. Congress also specified the formula for calculating the price for such waiver credits: Adjusted for inflation, the credits must be offered at the price of the higher of 25 cents per gallon or the amount by which $3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States.[43] The inflation adjustment is for years after 2008. EPA regulations provide that the inflation adjustment is calculated by comparing the most recent Consumer Price Index for All Urban Consumers (CPI–U) for the ''All Items'' expenditure category as provided by the Bureau of Labor Statistics that is available at the time EPA sets the cellulosic biofuel standard to the comparable value that was reported soonest after December 31, 2008.[44]

In contrast to its directions to EPA for setting the price of a cellulosic biofuel waiver credit, Congress afforded the Agency considerable flexibility in designing regulations specifying the permissible uses of the credits. The CAA states that EPA regulations ''shall

[41] Early credit generation periods were July 1, 2007 through December 31, 2007, and calendar years 2008, 2009 and 2010.

[42] Refineries produce gasoline by combining several different blendstocks produced by various refinery processing units. Reformate is a blendstock which contains approximately 80% of all benzene found in gasoline, per the MSAT2 regulatory impact analysis.

[43] More information on wholesale gasoline prices can be found on the Department of Energy's (DOE), Energy Information Administration's (EIA) Web site at: *http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMA_EPM0_PBR_NUS_DPG&f=M.*

[44] See U.S. Department of Labor, Bureau of Labor Statistics (BLS), Consumer Price Index Web site at: *http://www.bls.gov/cpi/.*

include such provisions, including limiting the credits' uses and useful life, as the Administrator deems appropriate to assist market liquidity and transparency, to provide appropriate certainty for regulated entities and renewable fuel producers, and to limit any potential misuse of cellulosic biofuel credits to reduce the use of other renewable fuels, and for such other purposes as the Administrator determines will help achieve the goals of this subsection.'' The final RFS2 regulations provide a detailed discussion of how we designed the provisions for cellulosic biofuel waiver credits in keeping with the statutory language. In short, 2012 cellulosic biofuel waiver credits (or ''waiver credits'') are only available for the 2012 compliance year. Waiver credits will only be made available to obligated parties, and they are nontransferable and nonrefundable. Further, obligated parties may only purchase waiver credits up to the level of their cellulosic biofuel RVO less the number of cellulosic biofuel RINs that they own. A company owning cellulosic biofuel RINs and cellulosic waiver credits may use both types of credits if desired to meet their RVOs, but unlike RINs, waiver credits may not be carried over for use in the next calendar year. Obligated parties may not use waiver credits to meet a prior year deficit obligation. Finally, unlike cellulosic biofuel RINs which may also be used to meet an obligated party's advanced and total renewable fuel obligations, waiver credits may only be used to meet a cellulosic biofuel RVO. An obligated party will still need to additionally and separately acquire RINs to meet their advanced biofuel and total renewable fuel obligations.

For the 2012 compliance period, since the applicable volume of cellulosic biofuel used to set the annual cellulosic biofuel standard is lower than the volume for 2012 specified in the CAA, we are making cellulosic waiver credits available to obligated parties for end-of-year compliance should they need them at a price of $0.78 per credit. To calculate this price, EPA first determined the average wholesale (refinery gate) price of gasoline using the most recent 12 months of data available from the EIA Web site on September 30, 2011. Based on this data, we calculated an average price of gasoline for the period July 2010 to June 2011 of $2.44. In accordance with the Act, we then calculated the difference of the inflation-adjusted value of $3.00, or $3.22, and $2.44, which yielded $0.78. Next, we compared the value of $0.78 to the inflation-adjusted value of $0.25, or $0.27. The Act requires EPA to use the greater of these two values as the price for cellulosic biofuel waiver credits.

The derivation of this value is more fully explained in a memorandum submitted to the docket for this rulemaking,[45] and a more complete description of the statutory requirements and their application can be found in the RFS2 final rule.[46] The price for the 2013 compliance period, if necessary, will be set when we announce the 2013 cellulosic biofuel standard.

B. Assessment of the Domestic Aggregate Compliance Approach

The RFS2 regulations contain a provision for renewable fuel producers who use planted crops and crop residue from U.S. agricultural land that relieves them of the individual recordkeeping and reporting requirements concerning the specific land from which their feedstocks were harvested. To enable this approach, EPA established a baseline number of acres for U.S. agricultural land in 2007 (the year of EISA enactment) and determined that as long as this baseline number of acres was not exceeded, it was unlikely that new land outside of the 2007 baseline would be devoted to crop production based on historical trends and economic considerations. We therefore provided that renewable fuel producers using planted crops or crop residue from the U.S. as feedstock in renewable fuel production need not comply with the individual recordkeeping and reporting requirements related to documenting that their feedstocks are renewable biomass, unless EPA determines through one of its annual evaluations that the 2007 baseline acreage of agricultural land has been exceeded.

In the final RFS2 regulations, EPA committed to make an annual finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded in a given year and publish this finding in the **Federal Register** by November 30 of the same year. If the baseline is found to have been exceeded, then producers using U.S. planted crops and crop residue as feedstocks for renewable fuel production would be required to comply with individual recordkeeping and reporting requirements to verify that their feedstocks are renewable biomass.

Based on data provided by the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), we have estimated that U.S. agricultural land reached approximately 392 million acres in 2011, and thus did not exceed the 2007 baseline acreage. This acreage estimate is based on the same methodology used to set the 2007 baseline acreage for U.S. agricultural land in the RFS2 final rulemaking. Specifically, we started with FSA crop history data for 2011, from which we derived a total estimated acreage of 392 million acres. We then subtracted the amount of land estimated to be participating in the Grasslands Reserve Program (GRP) and Wetlands Reserve Program (WRP) by the end of Fiscal Year 2011, 275,000 acres, to yield an estimate of approximately 392 million acres of U.S. agricultural land in 2011. The USDA data used to make this calculation can be found in the docket to this rule.

C. Assessment of the Canadian Aggregate Compliance Approach

On March 15, 2011, EPA issued a notice of receipt of and solicited public comment on a petition for EPA to authorize the use of an aggregate approach for compliance with the Renewable Fuel Standard renewable biomass requirements, submitted by the Government of Canada. The petition requested that EPA determine that an aggregate compliance approach will provide reasonable assurance that planted crops and crop residue from Canada meet the definition of renewable biomass. After through consideration of the petition, all supporting documentation provided and the public comments received, EPA determined that the criteria for approval of the petition were satisfied and approved the use of an aggregate compliance approach to renewable biomass verification for planted crops and crop residue grown in Canada.

The Government of Canada utilized several types of land use data to demonstrate that the land included in their 124 million acre baseline is cropland, pastureland or land equivalent to U.S. Conservation Reserve Program land that was cleared or cultivated prior to December 19, 2007, and was actively managed or fallow and nonforested on that date (and is therefore RFS2 qualifying land). The total agricultural land in Canada in 2011 is estimated at 121 million acres. This total agricultural land area includes 95.6 million acres of cropland and summer fallow, 15.6 million acres of pastureland and 9.8 million acres of agricultural land under conservation practices. This

[45] See memo to docket number EPA–HQ–OAR–2010–0133 from Scott Christian, on the subject of ''Calculating the price for cellulosic biofuel waiver credits,'' dated September 30, 2011.

[46] 75 FR 14726–14728.

acreage estimate is based on the same methodology used to set the 2007 baseline acreage for Canadian agricultural land in the RFS2 response to petition. The data used to make this calculation can be found in the docket to this rule.

VI. Comments Outside the Scope of This Rulemaking

In their comments responding to the NPRM, a number of parties used the opportunity to raise concerns that were not directly related to the issues and provisions we were addressing in the NPRM, such as the proposed standards for 2012, the applicable volume of biomass-based diesel for 2013, and the various proposed changes to the regulations designed to clarify intent and streamline implementation. Neither did these comments address setting the price for cellulosic biofuel credits or EPA's annual evaluation of the U.S. aggregate compliance approach for renewable biomass. In some cases, commenters requested EPA action in some other area, such as the following:

- Request for EPA to implement a more robust biofuel quality assurance program
- Request for EPA to mandate that 50% of all vehicles be E100 capable by 2017
- Request for EPA to encourage legislation that allows corn ethanol to be categorized as advanced biofuel
- Request for EPA to pursue changes to the statute that would make valid renewable fuels feedstock-neutral.

In other cases, commenters raised issues related to other areas not addressed in our NPRM, such as the following:

- Other state and federal fuel regulations
- Retail dispensing requirements and misfueling of E15 in non-flexible fueled vehicles
- Need for continuing federal incentives for biofuels, such as tax subsidies
- Relative energy security implications of imported petroleum versus imported biofuels
- Delayed RINs
- Definition of heating oil.

While we are taking these comments under consideration as we continue to implement the RFS2 program, these comments are outside the scope of today's action. In some cases, they are also outside our authority. Thus, we are not providing substantive responses to them at this time.

We also received comments in a number of other areas that, while outside the scope of this rulemaking, we believe would benefit from a response to clarify our position and/or intentions. These issues are addressed below.

One commenter provided a copy of a copyrighted report, ''Energy Life-Cycle Assessment Of Soybean Biodiesel Revisited''. Similarly, both Monsanto and RFA provided comments on the lifecycle GHG impacts of corn ethanol, indicating that it should be a higher GHG reduction than what was calculated by EPA as part of the RFS2 final rule and that we should reevaluate corn ethanol lifecycle emissions based on new studies that are available. Another commenter requested that we investigate the GHG impacts of the oleochemical industry increasing the use of palm oil as a feedstock as animal fats are increasingly diverted to the production of biofuels. We will consider the information and analyses provided as part of any future updates to our lifecycle evaluations of these biofuels.

Another commenter urged EPA to quickly certify additional feedstocks for cellulosic biofuels under the RFS. We are moving forward responding to a series of petitions requesting EPA approval of other pathways, including both feedstock-specific pathways (e.g., palm oil and sorghum) and company- or process-specific pathways. A discussion of the process involved and a list of the current pathways we are currently evaluating can be found at: *http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfs2-lca-pathways.htm.*

We appreciate that multiple stakeholders are highly interested in the timeline on which EPA is conducting these analyses. We note that the analysis required for the RFS fuel pathway determinations as required under CAA 211(o) are comprehensive in nature, and EPA is committed to ensuring they are conducted in an appropriately rigorous fashion.

Some commenters noted that regulated parties are having difficulty complying with the requirement that the RIN transfer date in EMTS and on product transfer documents (PTDs) be the actual title transfer date. Some of these commenters requested EPA enforcement discretion to allow biofuel producers and first purchasers to update their electronic systems in order to be in compliance with the title transfer date regulatory requirement. Two commenters specified that this enforcement discretion should be issued for six months in order to provide these companies with sufficient time to update their systems. EPA believes that the proposed enforcement discretion would likely introduce confusion for anyone who attempts to review and match transactions with records.

In contrast, several commenters requested that EPA reconsider its position that the RIN transfer date reported to EMTS and identified on PTDs must be the actual title transfer date. One commenter requested that EPA allow invoice dates to be used in lieu of title transfer dates as title transfer does not usually coincide with customer payments and ultimately place a burden on the selling company's cash flow. While we understand that some parties would prefer to use a date other than the true title transfer date for purposes of EMTS reporting and PTDs, we believe this would violate the clear language and intent of the regulations.

One commenter requested that EPA provide adjustment mechanisms to allow corrections in EMTS after noting that EMTS is a ''forward looking'' system, meaning that EMTS transactions cannot be modified once submitted. EPA is looking at several ways and has updated the RFS2 remedial action Web page since the comment period closed. EPA will continually update its guidance for regulated parties to correct violations that true mistakes on the following Web page: *http://www.epa.gov/otaq/fuels/renewablefuels/compliancehelp/rfs2remedialactions.htm.*

Additionally, in this rule, EPA is finalizing a regulation amendment giving EPA discretion to allow invalidly generated RINs to be used for compliance purposes on a case-by-case basis (see Section IV).

Several commenters requested that EPA edit Q&As 7.8 and 10.6 as they conflict with the regulations. EPA will review and make edits to the RFS2 Q&As in order to ensure agreement with the regulations as appropriate at a later date.

VII. Public Participation

Many interested parties participated in the rulemaking process that culminates with this final rule. This process provided opportunity for submitting written public comments following the proposal that we published on July 1, 2011 (76 FR 38844), and we considered these comments in developing the final rule. Public comments and EPA responses are discussed throughout this preamble.

VIII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a

''significant regulatory action'' because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

The economic impacts of the RFS2 program on regulated parties, including the impacts of the required volumes of renewable fuel, were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670). This action finalizes the percentage standards applicable in 2012 based on the volumes that were analyzed in the RFS2 final rule. This action is also finalizing technical amendments to the RFS2 regulations that have been determined to have no adverse economic impact on regulated parties since they generally clarify existing requirements.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. While there are three regulatory amendments in today's rule that affect the recordkeeping and reporting burdens for regulated parties, we believe that the information collections already approved for the RFS2 program's general recordkeeping and reporting requirements, or the information collection already under review, would also cover the these technical amendments.

The regulatory changes are listed in Table VIII.B–1.

TABLE VIII.B–1—TECHNICAL AMENDMENTS AFFECTING RECORDKEEPING AND REPORTING

Section	Description
80.1449(a)	Amended Production Outlook Report due date; added allowance for unregistered renewable fuel producers and importers to submit Production Outlook Reports.
80.1450(b)(1)(vi)	Amended to require submission of additional evidence as part of registration to verify eligibility for exemptions in § 80.1403(c) or (d).
80.1450(d)(1)–(d)(3)	Amended to add more specificity on when updates, addenda, or resubmittals are required for engineering reviews and to include references to foreign ethanol producers.

With regard to Production Outlook Reports, the change in due date is not expected to have any impact on the reporting burden. In addition, EPA recently prepared an Information Collection Request (ICR) document to permit the submission of voluntary Production Outlook Reports by domestic and foreign renewable fuels producers. The parties affected by the ICR are not regulated parties under the RFS2 program. The ICR has been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and may be identified by EPA ICR number 2409.01. Documents related to the ICR have been placed in docket number EPA–HQ–OAR–2005–0161, which is accessible at *http://www.regulations.gov.*

On October 14, 2010, EPA published a notice in the **Federal Register** announcing our intent to submit the proposed ICR for voluntary Production Outlook Reports to OMB for approval. (See 75 FR 63173). The 60-day comment period closed on December 14, 2010. No comments were received. On February 8, 2011, EPA published a **Federal Register** notice announcing submission of the ICR to OMB. Additional comments were solicited via an additional comment period through March 10, 2011.[47]

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 80, Subpart M under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* This would include the following approved information collections (with OMB control numbers and expiration dates listed in parenthesis): ''Renewable Fuels Standard Program: Petition and Registration'' (OMB Control Number 2060–0367, expires March 31, 2013); ''Renewable Fuels Standard (RFS2)'' (OMB Control Number 2060–0640, expires July 31, 2013); ''Regulations of Fuels and Fuel Additives: 2011 Renewable Fuels Standard—Petition for International Aggregate Compliance Approach'' OMB Control Number 2060–0655, expires February 28, 2014). Detailed and searchable information about these and other approved collections may be viewed on the Office of Management and Budget (OMB) Paperwork Reduction Act Web site, which is accessible at *http://www.reginfo.gov/public/do/PRAMain.* With regard to the technical amendments in § 80.1450, we believe that these information collections already approved for the RFS2 program's general recordkeeping and reporting requirements would also cover the amendments in today's final rule.

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 today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The impacts of the RFS2 program on small entities that are directly regulated under the RFS2 program were already addressed in the RFS2 final rule promulgated on March

[47] See ''Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Production Outlook Reports for Un-Registered Renewable Fuel Producers (New Collection),'' 76 FR 6781 (February 8, 2011). The document identification number for this notice is EPA–HQ–OAR–2005–0161–3221. The document identification number for the supporting statement is EPA–HQ–OAR–2005–0161–3222.

26, 2010 (75 FR 14670). This rule simply:

- Reduces the applicable volume of cellulosic biofuels in 2012 based on our projection of 2012 production levels.
- Establishes percentage standards for 2012 based either on this production projection (for cellulosic biofuels) or statutory levels (for advanced biofuels, biomass-based diesel, and total renewable fuel).
- Makes minor technical amendments to the regulations.

Therefore, this action will not impose any additional requirements on small entities beyond those which have already been evaluated.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule simply:

- Reduces the applicable volume of cellulosic biofuels in 2012 based on our projection of 2012 production levels.
- Establishes percentage standards for 2012 based either on this production projection (for cellulosic biofuels) or statutory levels (for advanced biofuels, biomass-based diesel, and total renewable fuel).
- Makes minor technical amendments to the regulations.

Thus, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations. A summary of the concerns raised, and EPA's response to those concerns, is provided in this preamble.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and impose compliance costs only on transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific standards established by Congress in statutes.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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. This action simply finalizes the annual standards for cellulosic biofuels for 2012 and clarifying changes and minor technical amendments to the regulations.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not relax the control measures on sources regulated by the RFS2 regulations and therefore will not cause emissions increases from these sources.

K. Congressional Review Act

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

IX. Statutory Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of today's rule, including the recordkeeping requirements, come from sections 114, 208, and 301(a) of the

Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel fuel, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: December 22, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

§ 80.1275 [Amended]

■ 2. In § 80.1275, remove paragraph (d)(3).

■ 3. Section 80.1401 is amended by revising the definitions of ''Annual cover crop'' and ''Naphtha'' to read as follows:

§ 80.1401 Definitions.

* * * * *

Annual cover crop means an annual crop, planted as a rotation between primary planted crops, or between trees and vines in orchards and vineyards, typically to protect soil from erosion and to improve the soil between periods of regular crops. An annual cover crop has no existing market to which it can be sold except for its use as feedstock for the production of renewable fuel.

* * * * *

Naphtha means a blendstock falling within the boiling range of gasoline which is composed of only hydrocarbons, is commonly or commercially known as naphtha, and is used to produce gasoline.

* * * * *

■ 4. Section 80.1405 is revised to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) (1) *Renewable Fuel Standards for 2010.*

(i) The value of the cellulosic biofuel standard for 2010 shall be 0.004 percent.

(ii) The value of the biomass-based diesel standard for 2010 shall be 1.10 percent.

(iii) The value of the advanced biofuel standard for 2010 shall be 0.61 percent.

(iv) The value of the renewable fuel standard for 2010 shall be 8.25 percent.

(2) *Renewable Fuel Standards for 2011.*

(i) The value of the cellulosic biofuel standard for 2011 shall be 0.003 percent.

(ii) The value of the biomass-based diesel standard for 2011 shall be 0.69 percent.

(iii) The value of the advanced biofuel standard for 2011 shall be 0.78 percent.

(iv) The value of the renewable fuel standard for 2011 shall be 8.01 percent.

(3) *Renewable Fuel Standards for 2012.*

(i) The value of the cellulosic biofuel standard for 2012 shall be 0.006 percent.

(ii) The value of the biomass-based diesel standard for 2012 shall be 0.91 percent.

(iii) The value of the advanced biofuel standard for 2012 shall be 1.21 percent.

(iv) The value of the renewable fuel standard for 2012 shall be 9.23 percent.

(b) EPA will calculate the value of the annual standards and publish these values in the **Federal Register** by November 30 of the year preceding the compliance period.

(c) EPA will calculate the annual renewable fuel percentage standards using the following equations:

$$\mathrm{Std}_{CB,i} = 100 * \frac{\mathrm{RFV}_{CB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{BBD,i} = 100 * \frac{\mathrm{RFV}_{BBD,i} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{AB,i} = 100 * \frac{\mathrm{RFV}_{AB,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{RF,i} = 100 * \frac{\mathrm{RFV}_{RF,i}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$Std_{CB,i}$ = The cellulosic biofuel standard for year i, in percent.

$Std_{BBD,i}$= The biomass-based diesel standard for year i, in percent.

$Std_{AB,i}$= The advanced biofuel standard for year i, in percent.

$Std_{RF,i}$= The renewable fuel standard for year i, in percent.

$RFV_{CB,i}$= Annual volume of cellulosic biofuel required by 42 U.S.C. 7545(o)(2)(B) for year i, or volume as adjusted pursuant to 42 U.S.C. 7545(o)(7)(D), in gallons.

$RFV_{BBD,i}$= Annual volume of biomass-based diesel required by 42 U.S.C. 7545 (o)(2)(B) for year i, in gallons.

$RFV_{AB,i}$= Annual volume of advanced biofuel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

$RFV_{RF,i}$= Annual volume of renewable fuel required by 42 U.S.C. 7545(o)(2)(B) for year i, in gallons.

G_i= Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i= Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

RG_i= Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i= Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i= Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RGS_i= Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

DS_i= Amount of diesel projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RDS_i= Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

GE_i= The amount of gasoline projected to be produced by exempt small refineries and small refiners, in year i, in gallons in any year they are exempt per §§ 80.1441 and 80.1442.

DE_i= The amount of diesel fuel projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442.

(d) (1) The 2010 price for cellulosic biofuel waiver credits is $1.56 per waiver credit.

(2) The 2011 price for cellulosic biofuel waiver credits is $1.13 per waiver credit.

(3) The 2012 price for cellulosic biofuel waiver credits is $0.78 per waiver credit.

■ 5. Section 80.1415 is amended by revising paragraph (c)(2) to read as follows:

§ 80.1415 How are equivalence values assigned to renewable fuel?

* * * * *

(c) * * *

(2) The application for an equivalence value shall include a technical justification that includes all the following:

(i) A calculation for the requested equivalence value according to the equation in paragraph (c)(1) of this section, including supporting documentation for the value of EC used in the calculation such as a certificate of analysis from a laboratory that verifies the lower heating value in Btu per gallon of the renewable fuel produced.

(ii) For each feedstock, component, or additive that is used to make the renewable fuel, provide a description, the percent input, and identify whether or not it is renewable biomass or is derived from renewable biomass.

(iii) For each feedstock that also qualifies as a renewable fuel, state whether or not RINs have been previously generated for such feedstock.

(iv) A description of the renewable fuel and the production process, including a block diagram that shows all inputs and outputs at each step of the production process with a sample quantity of all inputs and outputs for one batch of renewable fuel produced.

* * * * *

■ 6. Section 80.1426 is amended as follows:

■ a. By revising paragraph (f)(1).

■ b. By revising paragraph (f)(5)(ii).

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(f) * * *

(1) *Applicable pathways.* D codes shall be used in RINs generated by producers or importers of renewable fuel according to the pathways listed in Table 1 to this section, paragraph (f)(6) of this section, or as approved by the Administrator. In choosing an appropriate D code, producers and importers may disregard any incidental, de minimis feedstock contaminants that are impractical to remove and are related to customary feedstock production and transport. Tables 1 and 2 to this section do not apply to, and impose no requirements with respect to, volumes of fuel for which RINs are generated pursuant to paragraph (f)(6) of this section.

* * * * *

(5) * * *

(ii) (A) A feedstock qualifies under paragraph (f)(5)(i)(A) or (f)(5)(i)(B) of this section only if it is collected according to a plan submitted to and accepted by U.S. EPA under the registration procedures specified in § 80.1450(b)(1)(vii).

(B) A feedstock qualifies under paragraph (f)(5)(i)(C) of this section only if it is collected according to a plan submitted to and approved by U.S. EPA.

* * * * *

■ 7. Section 80.1429 is amended by revising paragraphs (b)(2) and (b)(9) introductory text to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(6) of this section, any party that owns a volume of renewable fuel must separate any RINs that have been assigned to that volume once the volume is blended with gasoline or fossil-based diesel to produce a transportation fuel, heating oil, or jet fuel. A party may separate up to 2.5 RINs per gallon of blended renewable fuel.

* * * * *

(9) Except as provided in paragraphs (b)(2) through (b)(5) and (b)(8) of this section, parties whose non-export renewable volume obligations are solely related to either the importation of products listed in § 80.1407(c) or § 80.1407(e) or to the addition of blendstocks into a volume of finished gasoline, finished diesel fuel, RBOB, or CBOB, can only separate RINs from volumes of renewable fuel if the number of gallon-RINs separated in a calendar year is less than or equal to a limit set as follows:

* * * * *

■ 8. Section 80.1431 is amended by adding a new paragraph (c) to read as follows:

§ 80.1431 Treatment of invalid RINs.

* * * * *

(c) Notwithstanding paragraph (b) of this section, improperly generated RINs may be used for compliance provided that all of the following conditions and requirements are satisfied and the renewable fuel producer or importer who improperly generated the RINs demonstrates that the conditions and requirements are satisfied through the reporting and recordkeeping requirements set forth below, that:

(1) The number of RINs generated for a batch exceeds the number of RINs that should have been properly generated.

(2) The RINs were improperly generated as a result of a broken meter,

an inadvertent temperature correction error, or an inadvertent administrative error.

(3) The renewable fuel producer or importer had in place at the time the RINs were improperly generated a quality assurance/quality control plan designed to ensure that process measuring equipment such as meters and temperature probes are properly maintained and to prevent inadvertent administrative errors.

(4) The renewable fuel producer or importer has taken any appropriate additional steps to prevent similar violations from occurring in the future.

(5) The improperly generated RINs have been transferred to another party.

(6) The renewable fuel producer or importer has not improperly generated RINs for the reasons described in paragraph (c)(2) of this section on more than five batches during any calendar year.

(7) All of the following remedial actions have been implemented within 30 days of the EMTS submission date of the improper RIN generation:

(i) The renewable fuel producer or importer retires an equal number of valid RINs with the same D Code and RIN year as the properly generated RINs, using an EMTS retire code of 110.

(ii) The renewable fuel producer or importer reports all the following information to EPA via EMTS, which EPA may make publicly available:

(A) Company name.

(B) Company ID.

(C) Facility name.

(D) Facility ID.

(E) The date the renewable fuel was produced.

(F) The date the RINs were originally generated.

(G) The number of RINs generated.

(H) The number of RINs improperly generated.

(I) RIN year.

(J) D codes of generated RINs.

(K) Batch numbers.

(L) EMTS Transaction ID of the original generation.

(M) An explanation of how the violation occurred, and why the improperly generated RINs meet the criteria in paragraph (c)(2) of this section.

(N) Steps taken to prevent similar violations from occurring in the future.

(O) Information under paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(P) Any additional information the Administrator may require.

(8) The renewable fuel producer or importer maintains all records relating to the improper RIN generation and the associated remedial actions taken, including but not limited to any of the following:

(i) All information regarding the generation of invalid RINs, including information that is sufficient to demonstrate that the improperly generated RINs meet the criteria in paragraph (c)(2) of this section.

(ii) Documents demonstrating that the renewable fuel producer or importer has implemented the quality control/quality assurance plan required in paragraph (c)(3) of this section, and has taken all appropriate additional steps to prevent similar violations from occurring in the future.

(iii) All correspondence with EPA.

(iv) All EMTS transactions (Generation, Buy, Sell and Retire).

(v) All Product Transfer Documents (PTDs).

(d) If EPA determines that a renewable fuel producer improperly generated RINs but did not meet the requirements set forth in paragraph (c) of this section, then the requirements of paragraph (b) of this section apply from the moment that the invalid RINs were generated in EMTS. Once the RIN generator has identified improperly generated RINs to EPA, then EPA may remove these improperly generated RINs from EMTS.

■ 9. Section 80.1449 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.1449 What are the Production Outlook Report requirements?

(a) By June 1 of each year (September 1 for the report due in 2010), a registered renewable fuel producer or importer must submit and an unregistered renewable fuel producer may submit all of the following information for each of its facilities, as applicable, to EPA:

* * * * *

■ 10. Section 80.1450 is amended by revising paragraphs (d)(1) through (d)(3) to read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(d) * * *

(1) Any producer of renewable fuel, and any foreign ethanol producer who makes changes to his facility that will allow him to produce renewable fuel, as defined in § 80.1401 that is not reflected in the producer's registration information on file with EPA must update his registration information and submit a copy of an updated independent third-party engineering review on file with EPA at least 60 days prior to producing the new type of renewable fuel. The producer may also submit an addendum to the independent third-party engineering review on file with EPA provided the addendum meets all the requirements in paragraph (b)(2) of this section and verifies for EPA the most up-to-date information at the producer's existing facility.

(2) Any producer of renewable fuel and any foreign ethanol producer who makes any other changes to a facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update his registration information 7 days prior to the change.

(3) All producers of renewable fuel and foreign ethanol producers must update registration information and submit an updated independent third-party engineering review according to the schedule in paragraph (d)(3)(i) or (d)(3)(ii) of this section, and including the information specified in paragraph (d)(3)(iii) of this section:

(i) For all producers of renewable fuel and foreign ethanol producers registered in calendar year 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31, 2013, and by January 31 of every third calendar year thereafter; or

(ii) For all producers of renewable fuel and foreign ethanol producers registered in any calendar year after 2010, the updated registration information and independent third-party engineering review shall be submitted to EPA by January 31 of every third calendar year after the first year of registration.

(iii) In addition to conducting the engineering review and written report and verification required by paragraph (b)(2) of this section, the updated independent third-party engineering review shall include a detailed review of the renewable fuel producer's calculations used to determine V_{RIN} of a representative sample of batches of each type of renewable fuel produced since the last registration. The representative sample shall be selected in accordance with the sample size guidelines set forth at § 80.127.

* * * * *

■ 11. Section 80.1451 is amended by revising paragraph (a)(1)(xi) to read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(xi) A list of all RINs generated prior to July 1, 2010 that were retired for compliance in the reporting period.

* * * * *

■ 12. Section 80.1452 is amended revising paragraphs (b)(2), (b)(4), and (b)(5) to read as follows:

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

* * * * *

(b) * * *

(2) The EPA company registration number of the renewable fuel producer or foreign ethanol producer, as applicable.

* * * * *

(4) The EPA facility registration number of the facility at which the renewable fuel producer or foreign ethanol producer produced the batch, as applicable.

(5) The EPA facility registration number of the importer that imported the batch, if applicable.

* * * * *

■ 13. Section 80.1460 is amended by adding a new paragraph (b)(6) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(b) * * *

(6) Generate a RIN for fuel for which RINs have previously been generated.

* * * * *

■ 14. Section 80.1464 is amended as follows:

■ a. By revising paragraph (a)(2) heading and paragraph (a)(2)(i).

■ b. By adding paragraphs (a)(2)(iii) and (a)(2)(iv).

■ c. By revising paragraph (a)(3)(ii).

■ d. By revising paragraph (b)(2) heading and paragraph (b)(2)(i).

■ e. By adding paragraphs (b)(2)(iii) and (b)(2)(iv).

■ f. By revising paragraph (b)(3)(ii).

■ g. By revising paragraph (c)(1) heading.

■ h. By adding paragraphs (c)(1)(iii) and (c)(1)(iv).

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(a) * * *

(2) *RIN transaction reports and product transfer documents.*

(i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in § 80.127, of each RIN transaction type (RINs purchased, RINs sold, RINs retired, RINs separated, RINs reinstated) included in the RIN transaction reports required under § 80.1451(a)(2) for the compliance year.

* * * * *

(iii) Verify that the product transfer documents for the representative samples under paragraph (a)(2)(i) of this section of RINs sold and the RINs purchased contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iv) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (a)(2)(iii) of this section and report as a finding any exceptions.

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, separated, sold, retired and reinstated, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume and type of renewable fuel (as defined in § 80.1401) owned at the end of each quarter; as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(b) * * *

(2) *RIN transaction reports and product transfer documents.*

(i) Obtain and read copies of a representative sample, selected in accordance with the guidelines in § 80.127, of each transaction type (RINs purchased, RINs sold, RINs retired, RINs separated, RINs reinstated) included in the RIN transaction reports required under § 80.1451(b)(2) for the compliance year.

* * * * *

(iii) Verify that the product transfer documents for the representative samples under paragraph (b)(2)(i) of this section of RINs sold and the RINs purchased contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iv) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (b)(2)(iii) of this section and report as a finding any exceptions.

(3) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; report the total number of each RIN generated during each quarter and compute and report the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, separated, sold, retired and reinstated, and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

* * * * *

(c) * * *

(1) *RIN transaction reports and product transfer documents.*

* * * * *

(iii) Verify that the product transfer documents for the representative samples under paragraph (c)(1)(i) of this section of RINs sold and RINs purchased contain the applicable information required under § 80.1453 and report as a finding any product transfer document that does not contain the required information.

(iv) Verify the accuracy of the information contained in the product transfer documents reviewed pursuant to paragraph (c)(1)(iii) of this section and report as a finding any exceptions.

* * * * *

■ 15. Section 80.1465 is amended by revising paragraph (h)(2) to read as follows:

§ 80.1465 What are the additional requirements under this subpart for foreign small refiners, foreign small refineries, and importers of RFS–FRFUEL?

* * * * *

(h) * * *

(2) Bonds shall be posted by any of the following methods:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

* * * * *

■ 16. Section 80.1466 is amended by revising paragraph (h)(2) to read as follows:

§ 80.1466 What are the additional requirements under this subpart for RIN-generating foreign producers and importers of renewable fuels for which RINs have been generated by the foreign producer?

* * * * *

(h) * * *

(2) Bonds shall be posted by any of the following methods:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign producer, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

* * * * *

■ 17. Section 80.1467 is amended by revising paragraphs (e)(1), (e)(2), and (g)(2) to read as follows:

§ 80.1467 What are the additional requirements under this subpart for a foreign RIN owner?

* * * * *

(e) * * *

(1) The foreign entity shall post a bond of the amount calculated using the following equation:

Bond = G * $ 0.01

Where:

Bond = Amount of the bond in U.S. dollars.

G = The total of the number of gallon-RINs the foreign entity expects to obtain, sell, transfer or hold during the first calendar year that the foreign entity is a RIN owner, plus the number of gallon-RINs the foreign entity expects to obtain, sell, transfer or hold during the next four calendar years. After the first calendar year, the bond amount shall be based on the actual number of gallon-RINs obtained, sold, or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred during the four calendar years immediately preceding the current calendar year. For any year for which there were fewer than four preceding years in which the foreign entity obtained, sold, or transferred RINs, the bond shall be based on the total of the number of gallon-RINs sold or transferred so far during the current calendar year plus the number of gallon-RINs obtained, sold, or transferred during any immediately preceding calendar years in which the foreign entity owned RINs, plus the number of gallon-RINs the foreign entity expects to obtain, sell or transfer during subsequent calendar years, the total number of years not to exceed four calendar years in addition to the current calendar year.

(2) Bonds shall be posted by any of the following methods:

(i) Paying the amount of the bond to the Treasurer of the United States.

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign RIN owner, provided EPA agrees in advance as to the third party and the nature of the surety agreement.

* * * * *

(g) * * *

(2) Any RIN that is obtained, sold, transferred, or held that is in excess of the number for which the bond requirements of this section have been satisfied is an invalid RIN under § 80.1431.

* * * * *

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Part VI

Department of Health and Human Services

42 CFR Part 37

Specifications for Medical Examinations of Underground Coal Miners; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 37

[Docket No. CDC–2011–0013; NIOSH–225]

RIN 0920–AA21

Specifications for Medical Examinations of Underground Coal Miners

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: With this notice of proposed rulemaking, the Department of Health and Human Services (HHS) proposes to modify its regulations on Specifications for Medical Examinations of Underground Coal Miners. Existing regulations establish specifications for providing, interpreting, classifying, and submitting film-based roentgenograms (now commonly called chest radiographs or X-rays) of underground coal miners for the surveillance of coal workers' pneumoconiosis (black lung) under the Coal Workers' Health Surveillance Program, administered by the National Institute for Occupational Safety and Health (NIOSH). The current standards specify requirements that permit the use of film-based radiography systems only; proposed amendments would retain those standards (with minor modifications that reflect more commonly-used terms) and add a parallel set of standards to specify requirements that would permit the use of digital radiography systems. An additional proposed amendment would require coal mine operators to provide NIOSH with employee rosters to assist the Program in improving participation by miners.

DATES: Comments must be received by March 9, 2012.

ADDRESSES: You may submit comments, identified by ''RIN 0920–AA21,'' by any of the following methods:

- *Internet:* Access the Federal e-rulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* NIOSH Docket Officer, *nioshdocket@cdc.gov.* Include ''RIN 0920–AA21'' and ''42 CFR 37'' in the subject line of the message.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking. All relevant comments will be posted without change to *http://www.regulations.gov* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or *http://www.cdc.gov/niosh/docket/NIOSHdocket0225.html.*

FOR FURTHER INFORMATION CONTACT: Anita Wolfe, Public Health Analyst, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, MS B208, Morgantown, WV, 26505, Telephone (888) 480–4042 (this is a toll-free number). Information requests can also be submitted by email to *cwhsp@cdc.gov.*

SUPPLEMENTARY INFORMATION: The preamble to this notice of proposed rulemaking is organized as follows:

Table of Contents

I. Public Participation
II. Background
  A. Need for Rulemaking
  B. Scope of Rulemaking
  C. Impact of Rulemaking
III. Summary of Proposed Rule
  A. Subpart—Chest Radiographic Examinations
  B. Subpart—Autopsies
IV. Regulatory Assessment Requirements
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Small Business Regulatory Enforcement Fairness Act
  E. Unfunded Mandates Reform Act of 1995
  F. Executive Order 12988 (Civil Justice)
  G. Executive Order 13132 (Federalism)
  H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
  I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)
  J. Plain Writing Act of 2010
V. Proposed Rule

I. Public Participation

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, arguments, recommendations, and data. Comments are invited on any topic related to this proposal. In addition, HHS invites comments specifically on the following questions related to this rulemaking:

(1) Does the current scientific evidence support the assertion that the application of digital chest imaging can be equivalent to film-screen radiography, if appropriate equipment, procedures, and methods are applied, in meeting the objectives of the Coal Workers' Health Surveillance Program mandated by 30 U.S.C. 843?

(2) Is there evidence that the proposed specifications for equipment, personnel, procedures, and methods will not be adequate to assure that the application of digital chest imaging will be equivalent to film-screen radiography in meeting the objectives of the Coal Workers' Health Surveillance Program? What specific changes are needed to ensure equivalence and what is the evidence supporting those changes?

(3) Is there evidence that any element of the specifications will not be feasible (for technological or financial reasons) for a significant proportion of the digital radiology facilities in coal mining regions? If yes, what changes in the specifications for equipment, personnel, procedures, and/or methods can improve feasibility while continuing to ensure the equivalence of digital chest imaging to film-based chest imaging for accurately detecting occurrence and progression of coal workers' pneumoconiosis (CWP) among coal miners?

II. Background

All mining work generates fine particles of dust in the air. Coal miners who inhale excessive dust are known to develop a group of diseases of the lungs and airways, including chronic bronchitis, emphysema, chronic obstructive pulmonary disease, silicosis, and CWP.[1] To address such threats to the U.S. coal mining workforce, the Coal Mine Health and Safety Act was enacted in 1969 (Pub. L. 91–173) and amended by the Federal Mine Safety and Health Act of 1977 (Pub. L. 95–164, 30 U.S.C. 801 *et seq.*) (Mine Act). The statutes included an enforceable 2 milligrams per cubic meter limit on respirable dust exposure during underground coal mine work (30 U.S.C. 842(b)(2)).[2] The science available at that time indicated that enforcement of this limit would greatly reduce the development of CWP, but could not ensure that all miners would be protected from developing disabling or lethal disease.

The NIOSH Coal Workers' Health Surveillance Program (CWHSP), also

[1] Petsonk EL, Parker JE [2008]. Coal workers' lung diseases and silicosis. In: Fishman AP, Elias J, Fishman J, Grippi M, Senior R, Pack A eds. Fishman's Pulmonary Diseases and Disorders. 4th ed. New York: McGraw-Hill, pp. 967–980.

[2] The Mine Safety and Health Administration (MSHA) has recently published a notice of proposed rulemaking that seeks to lower the existing exposure limit from 2.0 mg/m^3 to 1.0 mg/m^3 (75 FR 64412, October 19, 2010).

mandated by the Mine Act, was developed to detect CWP and prevent progression in individual miners, while at the same time providing information for evaluation of temporal and geographic trends in pneumoconiosis. The Mine Act grants NIOSH general authority to issue regulations as the Institute deems appropriate in carrying out provisions of the Act and specifically directs that medical examinations for underground coal miners shall be given in accordance with specifications prescribed by NIOSH (30 U.S.C. 843(a), 957).

To inform each miner of his or her health status, the Act requires that underground coal mine operators offer new workers a chest roentgenogram (hereafter chest radiograph or X-ray) through an approved facility as soon as possible after employment starts. Three years later a miner must be offered a second chest radiograph. If this second examination reveals evidence of pneumoconiosis, the miner is entitled to a third chest radiograph 2 years after the second. Further, all miners working in an underground coal mine must be offered a chest radiograph approximately every 5 years. All chest radiographs are to be given in accordance with specifications prescribed by the Secretary of Health and Human Services (30 U.S.C. 843(a)).

Chest radiographs taken for the CWHSP are assessed by qualified and licensed physician A or B Readers. *A Readers* are physicians who interpret chest radiographs for clinical purposes. They will have demonstrated knowledge of the International Labour Office (ILO) Classification of Radiographs of Pneumoconioses by completing a NIOSH-approved course or submitting six radiographs with satisfactory classifications, as specified in 42 CFR 37.51.

B Readers are physicians who have demonstrated proficiency in the use of the ILO classification system by taking and passing a specially-designed proficiency examination offered by NIOSH, as specified in 42 CFR 37.51. The NIOSH B Reader Program aims to ensure competency in the detection of pneumoconiosis by evaluating the ability of readers to classify a test set of radiographs, thereby creating and maintaining a pool of qualified readers having the skills and ability to provide accurate and precise classifications in accordance with ILO standards.[3] The B Reader examination currently offered by NIOSH consists of the classification of 125 chest radiographs over the course of 6 hours; the test addresses proficiency in classification of small opacities, large opacities, pleural abnormalities, and certain other abnormalities that may appear in the lung radiographs.

B Readers participate in national pneumoconiosis programs directed at coal miners and others who suffer from dust-related illness, and are also involved with epidemiologic evaluations, surveillance, and worker monitoring programs involving many types of pneumoconioses. In applying the ILO Classification, B Readers compare sets of standard images, which represent different types of abnormalities and levels of disease severity, with images of the individual being evaluated to identify parenchymal abnormalities (small and large opacities), pleural changes, and other features associated, or sometimes confused, with occupational lung disease. In the current ILO Classification, the B Reader is first asked to grade film quality and is then asked to categorize small opacities according to their presence, shape and size, location, and profusion. Large opacities are classified according to their presence and size. The B Reader also assesses the presence, location, width, extent, and degree of calcification of pleural abnormalities.[4]

Under NIOSH supervision (see 42 CFR 37.53, as amended, below), a summary report based upon the readings of the periodic chest radiograph is sent to each participating coal miner, who then has the opportunity to take action to reduce further dust exposure if early dust-induced lung disease is detected. Miners with evidence of pneumoconiosis have specific rights to transfer to jobs with lower dust levels under 30 CFR part 90 (see also 42 CFR 37.7). The combined results of these radiographic examinations of miners (radiographic surveillance) also enable NIOSH to track rates and patterns of CWP among the participating miners, so as to evaluate whether the implemented dust controls are effective in controlling CWP.

A. Need for Rulemaking

One goal of the Mine Act is to ensure that respirable dust concentrations in underground coal mines are sufficiently low to permit each miner the opportunity to be employed underground for a working lifetime without incurring any disability from pneumoconiosis or any other occupational lung disease (30 U.S.C. 841(b)). Mine operators use primary prevention to accomplish this health outcome objective; that is, they implement procedures for recognizing, controlling, and monitoring exposures to hazardous conditions.

However, because primary prevention measures may not be fully effective, secondary measures are recommended as a means to further protect workers. Secondary prevention involves ongoing miner health monitoring to recognize abnormalities early so that the miner has the necessary information to take appropriate action to prevent disease progression. Monitoring data are also periodically reviewed and analyzed to evaluate whether the primary preventive measures have been effective. This review permits the identification of work processes, exposures, or hazardous situations that require better control. Secondary prevention is particularly important when a risk to health remains in spite of adherence to recommended or permissible exposure levels, as has been demonstrated for coal miners.[5]

Chest radiography has historically been a valuable tool for monitoring the health of coal miners and other individuals potentially exposed to fibrogenic dusts such as silica or asbestos. Early changes due to pneumoconiosis are frequently identifiable on a high quality chest radiograph before an individual would otherwise seek medical attention. Over the years, methods for acquiring and interpreting film-screen chest radiographs have been continuously refined, to enhance the accuracy and usefulness of this technique as part of comprehensive occupational health protection programs. However, over the past decade digital radiography systems have been progressively replacing traditional analog film-based radiography for chest imaging.[6]

[3] International Labour Office [2011]. Guidelines for the use of ILO International Classification of Pneumoconiosis, revised edition 2011. Geneva, Switzerland: International Labour Office. Occupational Safety and Health Series No. 22 (Rev. 2011).

[4] NIOSH [2007]. Roentgenographic Interpretation Form [*http://www.cdc.gov/niosh/topics/surveillance/ords/pdfs/CWHSP-ReadingForm-2.8.pdf*]. Date accessed: January 5, 2011.

[5] NIOSH [1995]. Criteria for a recommended standard: Occupational exposure to respirable coal mine dust. Cincinnati, Ohio: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 95–106.

See also NIOSH [2010]. A review of information published since 1995 on coal mine dust exposures and associated health outcomes. NIOSH Docket Number 210 [*http://www.cdc.gov/niosh/docket/review/docket210/*]. Date accessed: January 5, 2011.

[6] NIOSH [2008]. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati,

Continued

In order to retain the recognized benefits of radiographic health monitoring as a preventive health measure that is easily accessible by dust-exposed workers, it is necessary to require that underground coal mine operators furnish NIOSH with a current roster of miners' names and addresses. CWHSP has found that directly contacting coal miners who are due for a chest examination results in a higher number of miners who participate in the Program. In 1990, NIOSH responded to declining underground coal miner participation in the Program by obtaining work rosters for contact information and sending notifications of availability of chest X-ray surveillance directly to the miners. Over the next few years, this led to increased participation in the Program.[7] Coal miners themselves have indicated that they would prefer to receive a letter from CWHSP at their residence, rather than being notified by their employer, because they feel that direct contact with the Program provides them greater confidentiality. Also, in the experience of CWHSP, the increased family involvement that follows from receipt of a letter at home improves Program participation. Almost all underground coal mine operators (approximately 505 establishments[8]) provide CWHSP with a roster of employees. The rare instance of an operator refusing to comply with the request resulted in no coal miners employed by a non-compliant operator participating in the Program. NIOSH is concerned that further noncompliance with CWHSP's request will lead to lower rates of participation in the Program, and result in higher rates of pneumoconiosis. An alternative to the roster requirement—asking the mines to post Program information on a bulletin board in the mine—has been found to be ineffective and has not resulted in the same level of participation that has been demonstrated by direct mailings.

Finally, previously effective approaches to radiographic monitoring need to be modified to reflect the different characteristics of digital imaging compared to film-screen radiography. Additionally, due to the broad diversity of hardware and software utilized in digital imaging, specifications are required to assure that the operational characteristics of the image acquisition and display systems are sufficiently standardized to support uniformity among these health assessments. In addition, they must assure confidentiality to the extent permitted by law, data integrity, and interoperability.[9] Most importantly, they must permit accurate identification of the early changes seen in dust-related diseases.

B. Scope of Rulemaking

Existing regulations under 42 CFR part 37 provide rules and specifications for giving, interpreting, classifying, and submitting chest radiographs as required under section 203 of the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 843). Those rules will essentially remain in effect: This rulemaking will not substantially alter the current standards, but will update the terminology used in the current standards (*e.g.,* ''roentgenogram'' to ''radiograph'') and include edits to maintain the accuracy of external references.

Significantly, the new rule would expand the availability of chest radiographic examinations by establishing additional options for giving, interpreting, classifying, and submitting digitally-acquired radiographs under the same scope as the existing rule does for film radiographs. The proposed rule would establish the minimum specifications for methods, procedures, quality assurance, documentation, and equipment including computer software for facilities seeking approval to perform and submit digital radiographic examinations as well as the physician readers who interpret, classify, and submit reports using those radiographs. The proposed rule would also make limited changes to general requirements to reflect current terminology (such as the use of ''radiograph'' instead of ''roentgenogram'' which is no longer commonly used), practice or needs, such as requiring mine operators to provide a roster of current miners to NIOSH, which uses this information to promote miner participation in the Coal Workers' Health Surveillance Program. The proposed rule will not modify existing requirements for miner radiographic examinations, eligibility, or other rights, including transfer of affected miners in accordance with 30 CFR part 90.

C. Impact of Rulemaking

The U.S. Department of Labor (DOL) will likely amend its Black Lung Benefits Act (BLBA) program regulations to correspond with the changes proposed here. The BLBA provides disability compensation and medical benefits to miners disabled by pneumoconiosis and monthly compensation to their eligible survivors (30 U.S.C. 901–944). Because DOL is required to consult with NIOSH on the development of criteria for medical tests for coal miners (30 U.S.C. 902(f)(1)(D)), DOL has modeled its technical requirements for chest radiographs on those adopted by NIOSH for the Coal Workers' Health Surveillance Program (see 20 CFR 718.102 and 20 CFR Part 718 Appendix A). DOL's Occupational Safety and Health Administration (OSHA) might also consider amending its current asbestos regulations for general industry, shipyard employment, and construction (29 CFR 1910.1001 Appendix E, 29 CFR 1915.1001 Appendix E, and 29 CFR 1926.1101 Appendix E, respectively). OSHA's asbestos regulations are related to this proposed rulemaking, although they are not explicitly linked by statute or regulation.

The DOL standards refer to chest ''roentgenograms,'' an outdated term which NIOSH proposes to replace with the more contemporary ''radiograph'' as discussed below in the summary of the proposed digital standards. The DOL standards also rely upon the same ILO standards for the classification of radiographs, and might need to be amended to comport with the 2011 version of the ILO Classification, as referenced in this proposed rule. Finally, the DOL standards refer to film-based images and might need to be expanded to refer to digitally-acquired images in order to allow for such images to be used for purposes of determining eligibility for compensation.

OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[7] See Work-Related Lung Disease (WoRLD) Surveillance System, Volume 1: Coal Workers' Pneumoconiosis: Morbidity, Table 2012. CWXSP: Number and percentage of examined underground miners with coal workers' pneumoconiosis (ILO category 1/0+) by tenure, 1970–2009, *http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=2550&GroupRefNumber=T02-12.* Accessed November 17, 2011.

[8] U.S. Department of Labor, Mine Safety and Health Administration. Mining Industry Accident, Injuries, Employment, and Production Data—Address & Employment Self-Extracting Files. *http://www.msha.gov/stats/part50/p50y2k/aetable.htm.* Accessed July 7, 2011.

[9] Samei E, Ravin CE [2008]. Assuring image quality for classification of digital chest radiographs. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

III. Summary of Proposed Rule

A. Subpart—Chest Radiographic Examinations

This proposed rule would establish new requirements for digital radiography under existing part 37 of 42 CFR—Specifications for Medical Examinations of Underground Coal Miners. The new provisions would supplement and update the existing requirements for film-screen radiographs by establishing standards for digital radiographs. The following is a section-by-section summary which describes and explains the provisions of the rule. Table 1 matches the current regulatory provisions with the corresponding proposed provisions. The public is invited to provide comment on any aspect of the proposed rule. The proposed regulatory text for the proposed rule is provided in the last section of this notice.

TABLE 1—NEW AND PROPOSED PROVISIONS

Current regulation	Proposed regulation
37.2 Definitions	37.2 Definitions
37.3 Chest roentgenograms required for miners	37.3 Chest radiographs required for miners
37.4 Plans for chest roentgenographic examinations	37.4 Plans for chest radiographic examinations
37.5 Approval of plans	37.5 Approval of plans
37.6 Chest roentgenographic examinations conducted by the Secretary	37.6 Chest radiographic examinations conducted by the Secretary
37.7 Transfer of affected miner to less dusty area	37.7 Transfer of affected miner to less dusty area
37.8 Roentgenographic examination at miner's expense	37.8 Radiographic examination at miner's expense
37.20 Miner identification document	37.20 Miner identification document
37.40 General provisions	37.40 General provisions
37.41 Chest roentgenogram specifications	37.41 Chest radiograph specifications—film
37.42 Approval of roentgenographic facilities	37.42 Chest radiograph specifications—digital radiography systems
37.43 Protection against radiation emitted by Roentgenographic equipment	37.43 Approval of radiographic facilities that use film
	37.44 Approval of radiographic facilities that use digital radiography systems
	37.45 Protection against radiation emitted by radiographic equipment
37.50 Interpreting and classifying chest roentgenogram	37.50 Interpreting and classifying chest radiographs—film
37.51 Proficiency in the use of systems for classifying the pneumoconioses	37.51 Interpreting and classifying chest radiographs—digital radiography systems
37.52 Method of obtaining definitive interpretations	37.52 Proficiency in the use of systems for classifying the pneumoconioses
37.53 Notification of abnormal roentgenographic findings	37.53 Method of obtaining definitive interpretations
	37.54 Notification of abnormal radiographic findings
37.60 Submitting required chest roentgenograms and miner identification documents	37.60 Submitting required chest radiographs and miner identification documents
37.70 Review of interpretations	37.70 Review of interpretations
37.80 Availability of records	37.80 ability of records
37.200 Scope	37.200 Scope
37.201 Definitions	37.201 Definitions
37.202 Payment for autopsy	37.202 Payment for autopsy
37.203 Autopsy specifications	37.203 Autopsy specifications
37.204 Procedure for obtaining payment	37.204 Procedure for obtaining payment

Section 37.1 Scope

This existing section provides the scope of these provisions, and remains unchanged from the current regulation.

Section 37.2 Definitions

This existing section contains definitions for terms that appear throughout part 37. A number of terms appearing in the current regulations remain unchanged, including ''Act,'' ''convenient time and place,'' ''MSHA,'' ''miner,'' ''operator,'' and ''Secretary.''

This section proposes to amend the following terms to reflect updated terminology and references: ''NIOSH,'' and ''chest radiograph.'' We propose to change ''pre-employment physical examination'' to ''pre-placement physical examination'' to be consistent with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112(d)) (ADA). The ADA prohibits an employer from asking or requiring a job applicant to take a medical examination or inquiring about whether an applicant has a disability before an offer of employment has been made. However, the ADA does allow an employer to require a medical examination after an offer of employment has been made, subject to certain restrictions. ''Panel of B Readers'' would be amended to indicate that the panel comprises all currently-approved B Readers.

Finally, this section includes definitions of the following proposed new terms: ''digital radiography systems,'' ''computed radiography,'' ''digital radiography,'' ''NIOSH representatives,'' ''qualified medical physicist,'' ''radiographic technique chart,'' ''radiologic technologist,'' and ''soft copy.''

Section 37.3 Chest Radiographs Required for Miners

This existing section requires mine operators to provide miners an opportunity to receive a chest radiograph. We propose a change to this provision to delete and replace outdated text. For example, in § 37.3(a), ''roentgenogram'' would be replaced by ''radiograph.'' Similarly in § 37.3(a)(1), ''ALOSH'' would be replaced with ''NIOSH.''

Paragraph (b)(1) would be amended to remove reference to a pre-employment physical examination, which is prohibited by the Americans with Disabilities Act of 1990 (42 U.S.C. 12112(d)). Paragraph (b)(3) would be amended to further clarify the classification of simple pneumoconioses.

Section 37.4 Plans for Chest Radiographic Examinations

This existing section requires that mine operators submit to NIOSH a Coal Mine Operator's Plan (Form CDC/NIOSH (M)2.10, OMB 0920–0020, exp. June 30, 2014) for chest radiographic examinations, including the beginning and ending dates of the 6-month period for voluntary examinations, and the name and location of the approved X-ray facility or facilities.

We propose to amend § 37.4(a), (d), (e), and (f) to update terminology to reflect ''radiographic'' for ''roentgenographic'' and ''NIOSH'' for ''ALOSH.''

We propose to amend § 37.4(a)(3) to specifically require the mine operator to submit a roster with the names and current addresses of covered miners with the operator's proposed plan. This is current practice and permits mailings directly from NIOSH to miners, which both emphasizes the extent of the confidentiality exercised by the program and explains the importance of the health surveillance program. As discussed above, such direct communication from NIOSH has proven important in encouraging miners' participation.

We propose to amend § 37.4(a)(6) to specify that when a coal mine operator examination plan lists a NIOSH-approved X-ray facility that uses a digital radiographic system, the listed physician who provides the first clinical reading of a coal miner's digital chest radiograph must have appropriate qualifications, but is not required to perform an ILO classification for pneumoconiosis. These initial clinical readings would therefore not be required to meet the specifications for pneumoconiosis classification listed in § 37.51 (b), (c), (d), and (e). This should increase the number of digital radiographic facilities available to miners that can be listed by coal mine operators on examination plans.

We propose to amend § 37.4(a)(7)(ii) to extend the existing confidentiality provisions for film radiographs to digital radiographs, including requiring, to the extent that is technically feasible for the imaging system used, the permanent deletion or rendering permanently inaccessible of all digital files at the facility. We further propose to amend this section to be consistent with the requirements of the Americans with Disabilities Act, which prohibits the use of pre-employment medical examinations. We propose to strike the reference in this paragraph to the pre-employment examination and disclosure of information gained during that examination.

Section 37.5 Approval of Plans

This existing section outlines the process undertaken by the Secretary of HHS to approve or deny approval of a Coal Mine Operator's Plan (Form CDC/NIOSH (M)2.10, OMB 0920–0020, exp. June 30, 2014). We propose to amend this section to redact outdated text and to correct gender-exclusive language.

Section 37.6 Chest Radiographic Examinations Conducted by the Secretary

This existing section details the conditions under which the HHS Secretary will determine whether to conduct a chest radiographic examination. We propose to amend this section to replace outdated text with current terminology.

Section 37.7 Transfer of Affected Miner to Less Dusty Area

Under 30 CFR part 90, miners whose radiographs show specific categories of pneumoconiosis are offered the right to frequent workplace dust monitoring, and transfer to a job environment with not more than 1 mg/m^3 respirable dust levels, if needed and such a job is available at the mine. If such a work location is not available, transfer is offered to the job with the lowest exposure below 2 mg/m^3, which is the current permissible exposure limit for respirable dust enforced by MSHA in coal mines. We propose to amend this section to replace outdated text with current terminology. Also, we propose to replace ''2 mg/m^3'' with ''the maximum respirable dust concentration permitted by MSHA'' and replace ''1 mg/m^3'' with ''50 percent of the maximum respirable dust concentration permitted by MSHA.'' The revised wording would not impact current requirements; however it would remain consistent with any MSHA rulemaking that alters the relevant permissible exposure limits.

Section 37.8 Radiographic Examination at Miner's Expense

This existing section provides for any miner who wishes to obtain a radiographic examination at his or her own expense. We propose to amend this section only to replace the outdated ''ALOSH'' with ''NIOSH.''

Section 37.20 Miner Identification Document

This existing section requires the completion of a Miner Identification Document (Form CDC/NIOSH (M)2.9, OMB 0920–0020, exp. June 30, 2014) for each miner when the chest radiograph is made. We propose to amend this section only to replace ''roentgenographic'' and ''roentgenogram'' with ''radiographic'' and ''radiograph.''

Section 37.40 General Provisions

This existing section outlines general provisions for chest radiographic examinations. We propose to amend this section to update the terminology.

Section 37.41 Chest Radiograph Specifications—Film

This existing section establishes performance standards for the acquisition of chest radiographs using film-screen technology. We propose to amend this section to update terminology and standards. We propose to add § 37.41(c) to require that a radiologic technologist perform the radiograph. This requirement is new. The existing rule does not clearly specify the qualifications of the provider who performs the radiologic examination. In light of ongoing concerns related to radiation exposure, it is necessary to specify that this provider have documented qualifications.

We propose to amend § 37.41(i)(7) to remove the current language, ''[w]hen using over 90kV,'' because proposed § 37.42(e), below, would require that radiographs be made by units having generators with a minimum rating of 300 mA at 125 kVp. We also propose to amend § 37.41(m) to remove the word ''densitometric,'' as the test object may evaluate characteristics of the exposure in addition to density.

We also propose to amend § 37.41(h) to remove the reference to Part F of the Suggested State Regulations for the Control of Radiation, of the Conference of Radiation Control Program Directors (Rev 2009). The beam limiting device must be of the type described in 21 CFR 1020.31(d), (e), (f), and (g).

Finally, we propose to remove § 37.41(i)(9), which requires that each facility shall establish a formal quality assurance program. This requirement would be instead inserted into proposed § 37.43, which would set standards for the approval of radiographic facilities that use film (see below).

Section 37.42 Chest Radiograph Specifications—Digital Radiography Systems

This proposed section establishes performance standards for the acquisition of chest radiographs using digital radiography systems, including digital radiography and computed radiography. We propose adding this

new section in its entirety; it is patterned after the existing § 37.41—Chest radiographic specifications for film.

Proposed § 37.42(a) would establish basic logistical requirements for conducting chest radiographic examination. For example, under this provision, the imaging facility would be required to provide a dressing area. This provision is identical to the existing regulation for film, § 37.41(b).

Proposed § 37.42(b) would specify minimum requirements for the position of the subject of the radiograph and for the resolution and positioning of the resulting image. The required size and positioning of the X-ray detectors for digital systems is identical to that in the existing regulation for film-screen systems (§ 37.41(a)). Exact specifications for the digital imaging detector are provided because detectors must provide sufficient image size and gray scale depth to demonstrate the required subtle contrasts, and sufficient density of pixels to offer adequate resolution for the fine linear fibrotic shadows.[10] The specification of a maximum pixel pitch of 200 μm, a minimum gray-scale bit depth of 10, and spatial resolution of at least 2.5 line pairs per millimeter are based upon the existing peer-reviewed research comparing digital and traditional imaging and ensures that the use of digital radiography systems will not result in reduced ability to recognize and quantify the abnormalities.[11] Commercially-available imaging systems are able to meet these specifications.[12]

Proposed § 37.42(c) would require that chest radiographs obtained pursuant to these provisions must be made by a qualified radiologic technologist.

Proposed § 37.42(d) would specify the required size of the X-ray machine's focal spot. This proposed provision would follow the existing regulation for film (§ 37.41(c)).

Proposed § 37.42(e) would specify the minimum amperage and voltage required to produce chest radiographs. This section would be identical to the existing regulation for film, § 37.41(d), but with updated terminology.

Proposed § 37.42(f) would require radiographic equipment be used with a power supply that complies with the X-ray machine's manufacturer specifications. Adequately conditioned power is needed for consistent generation of the radiation exposure needed for imaging. The requirement to meet minimum power supply recommendations for the equipment assures that the imaging system can perform as intended and specified by the manufacturer.

Proposed § 37.42(g) would require that radiographic equipment has a beam-limiting device to reduce the amount of scatter and off-focus radiation. While this provision largely mirrors the provision for film-screen systems (§ 37.41(g)), it also specifies that electronic means for limiting the size of the final image shall not be used. Electronic ''shutters'' are available for some digital radiography systems and can constrain image size but do not limit radiation exposure, and thus their use is prohibited to reduce the adverse health impact on the miner of unnecessary exposure to ionizing radiation associated with the radiograph.

Proposed § 37.42(h) would require the use of radiographic technique charts that are developed specifically for the X-ray system and detector combination used at a facility. If automated exposure control devices are used, they should be documented using professionally recommended methods; such information should be stored for 5 years after the miner's examination. NIOSH believes that retaining such records for 5 years is already standard business practice. Maintaining records is necessary to permit individuals at the facility to audit their own adherence to the guidance. Failure to maintain documentation is much easier to demonstrate and enforce than specific elevated radiation exposures for individual examinations. Five years was chosen as a compromise between minimizing records storage burden and maintaining the ability to perform meaningful audits both for NIOSH and for the facility staff.

The proposed specifications for digital radiography systems follow existing regulations for film (§ 37.41(h)(3)) requiring specified exposure settings. Because of the recognized potential for higher ionizing radiation exposures using digital radiography systems, we have included additional requirements to limit these exposures in accordance with recommendations established by the American Association of Physicists in Medicine.[13]

Proposed § 37.42(i)(1) would require that the maximum exposure time not exceed 50 milliseconds except for subjects of a certain size. This provision would mirror the existing regulation for film-screen technology (§ 37.41(h)(1), although the text is modified to use contemporary timing units.

Proposed § 37.42(i)(2) would specify the required distance from the source or focal spot to the detector. This provision mirrors the existing regulation for film (§ 37.41(g)) but with additional text clarifying metric units.

Proposed § 37.42(i)(3) would specify the required exposure setting for digital radiographs and incorporate by reference current professional standards intended to limit exposures from digital radiographs. This proposed section mirrors existing regulations for film-screen technology (§ 37.41(h)(3)).

Proposed § 37.42(i)(4) would establish that digital radiography system performance, including image signal-to-noise and detective quantum efficiency, be evaluated and meet the standards of

[10] Samei E [2008]. Acquisition of digital chest images for pneumoconiosis classification: Methods, procedures, and hardware. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[11] Franzblau A, Kazerooni EA, Sen A, Goodsitt MM, Lee SY, Rosenman KD, Lockey JE, Meyer CA, Gillespie BW, Petsonk EL, Wang ML [2009]. Comparison of digital radiographs with film radiographs for the classification of pneumoconiosis. Acad Radiol 16(6):669–677.

Sen A, Lee SY, Gillespie BW, Kazerooni EA, Goodsitt MM, Rosenman KD, Lockey JE, Meyer CA, Petsonk EL, Wang ML, Franzblau A [2010]. Comparison of reliability of classification for pneumoconiosis of film and digital radiographs: A modeling approach. Acad Radiol 17(4):511–519.

Laney AS, Petsonk EL, Wolfe AL, Attfield MD [2009]. Comparison of storage phosphor computed radiography with conventional film-screen radiography in the recognition of pneumoconiosis. Eur Respir J, published ahead of print November 19, 2009.

[12] Flynn MJ [2008]. Image presentation: Implications of processing and display. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[13] Shepard SJ, Wang J, Flynn M, Gingold E, Goldman L, Krugh K, Leong DL, Mah E, Ogden K, Peck D, Samei E, Willis C [2009]. An exposure indicator for digital radiography. Report of AAPM Task Group 116. College Park, MD: American Association of Physicists in Medicine. AAPM Report No. 116.

Rossi R, Lin PJ, Rauch P, Strauss K [1985]. Performance specifications and acceptance testing for X-ray generators and automatic exposure control devices. Report of the Diagnostic X–Ray Imaging Committee Task Group on Performance Specifications and Acceptance Testing for X–Ray Generators and Automatic Exposure Control Devices. AAPM Report No. 14.

Seibert JA, Bogucki TM, Ciona T, Huda W, Karellas A, Mercier J, Samei E, Shepart SJ, Steward B, Strauss K, Suleiman O, Tucker D, Uzenoff R, Weiser JC, Willis C [2006]. Acceptance testing and quality control of photostimulable storage phosphor imaging systems. Report of AAPM Task Group 10. College Park, MD: American Association of Physicists in Medicine. AAPM Report No. 93.

a qualified medical physicist in accordance with current professional standards, which are incorporated by reference in this section. This section would also govern the use of image management software. Digital systems use direct or indirect quantification of electronic signals from the detectors, and thus the character and quality of the resulting image is affected by both hardware and software signal management. To ensure that images collected for the purposes of this regulation using digital systems are adequate, it is important that approved imaging systems satisfy the relevant contemporary professionally recommended minimum performance criteria. Further, to improve comparability in the character of chest radiographic images submitted by different approved facilities for the purposes of this regulation, this section would require that image management software and settings for routine chest imaging be used.

In addition to management software, manufacturers of digital radiography systems provide unique proprietary versions of image modifying software, and the resulting images have distinctly different appearances. There is currently no scientific consensus that a specific approach to image enhancement software provides superior performance in imaging pneumoconiotic opacities. Therefore, this section would prohibit the use of image enhancement, except to the extent that some enhancement features might be integral to the digital radiography system and hence are not elective; for such cases, this section would specify that image enhancement be minimized to the extent permitted by the system.

Proposed § 37.42(i)(5) would establish the Digital Imaging and Communications in Medicine (DICOM) standard [14] as the relevant data storage and transmission standard. At a 2008 NIOSH workshop, entitled Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images, participants evaluated digital chest radiographic image file formats, and found that aside from DICOM, there are currently no other adequately specified digital image formats that support the resolution, security, and interoperability required for this application.[15] Chest radiographic images obtained using digital systems are stored and transferred as electronic data files. To ensure the integrity of the information, patient/worker confidentiality, full access by appropriate parties to the complete data file, compatibility with hardware systems from various manufacturers, and uniformity of image viewing and data management, the proposed rule would require that images collected for the purposes of this regulation using digital systems be formatted using the industry standardized electronic format, and that any data compression employed be lossless. Physical, technical, and administrative controls are specified to prevent unauthorized access to protected health information and confidential medical findings, during data acquisition, storage, and transfer. To support the uniform grayscale standard display function of image display devices, images must be formatted as DICOM ''DX'' objects.[16] To enable auditing of radiation exposure data over time, the facility would be required to maintain either written or electronic records, formatted according to industry standards when possible.

Proposed § 37.42(i)(6) would allow NIOSH the discretion to require the use of a test object for an evaluation of image quality. This section is identical to existing film regulation § 37.41(l), although the term 'densitometric' has been omitted in describing the test object, as the object may evaluate characteristics of the exposure in addition to density.

Proposed § 37.42(i)(7) would require computed radiography (X-ray image acquisition systems that detect signals using a cassette-based photostimulable storage phosphor) imaging plates to be inspected regularly and cleaned when necessary. This specification preserves the existing required periodicity of cleaning because, for storage phosphor digital systems as with film-screen systems, periodic cleaning of equipment is necessary to reduce the possibility of image artifacts.

Proposed § 37.42(i)(8) would require the use of a grid or air gap for reducing radiation scatter. This section mirrors the existing regulation for film (§ 37.41(h)(7)) with additional language addressing interference patterns. Such patterns can arise using digital techniques, and can interfere with image classification and the detection of abnormalities.

Proposed § 37.42(i)(9) would establish the geometry of the radiographic system. This section mirrors existing film regulation § 37.41(h)(8), with text amended to reflect the digital technology rather than film.

Proposed § 37.42(i)(10) would require that radiographic equipment meet recommended environmental temperature and humidity thresholds set by the manufacturer. This requirement would be exclusive to digital radiography systems, and would ensure that the imaging system can perform as intended and as specified by the manufacturer.

Proposed § 37.42(i)(11) would ensure that the miner receives a chest radiograph determined to be of acceptable quality before being advised that the examination is concluded. In the event of a substandard radiograph, under this section, a miner would immediately be given another. Finally, this section would also require that unacceptable digital image files immediately be permanently deleted or rendered inaccessible in the event that permanent deletion is not technologically feasible. These requirements are identical to that for film (§ 37.41(j)) except that the text refers to the deletion of digital files rather than the disposal of films.

Proposed § 37.42(j)(1) and (2) would prohibit the use of digital images derived from film-screen chest radiographs for the purposes of this rule. Similarly, images acquired using digital systems and then printed on transparencies would also be prohibited. Research has shown that these approaches do not assure similar performance to that obtained from film under the existing regulations (§ 37.41).[17]

[14] DICOM is a widely-accepted standard for handling, storing, printing, and transmitting medical imaging information. DICOM is managed by the National Electrical Manufacturers Association.

[15] NIOSH [2008]. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[16] Clunie DA. Standardizing file formats, security, and integration of digital chest image files for pneumoconiosis classification. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[17] Samei E [2008]. Acquisition of digital chest images for pneumoconiosis classification: Methods, procedures, and hardware. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

Franzblau A, Kazerooni EA, Sen A, Goodsitt MM, Lee SY, Rosenman KD, Lockey JE, Meyer CA, Gillespie BW, Petsonk EL, Wang ML [2009].

Section 37.43 Approval of Radiographic Facilities That Use Film

Proposed § 37.43 would comprise the current requirements in existing § 37.42—Approval of roentgenographic facilities. Proposed § 37.43(a) would base facility eligibility to participate in the Coal Workers' Health Surveillance Program on a demonstrated ability to make high quality diagnostic chest radiographs. This section remains unchanged from the existing provision but for the addition of text indicating that an object other than the plastic step wedge objects may be used. Newer test objects have become available, and in the future, NIOSH may want to use a more compact and capable test object that is simpler to use than the step wedges.

Proposed § 37.43(b) would specify requirements for an X-ray Facility Certification Document (Form CDC/NIOSH (M)2.11, OMB 0920–0020, exp. June 30, 2014) describing each X-ray unit to be used to make chest radiographs. This section would be unchanged from the existing § 37.42(c) except for the replacement of outdated terminology, including incorporation by reference of National Council on Radiation Protection and Measurements (NCRP) Report No. 102.

Proposed § 37.43(c) would establish that radiographs submitted with a facility application be evaluated by a qualified consultant or one or more individuals selected by NIOSH from the panel of B Readers. This section would be substantively unchanged from the existing § 37.42(d), although we propose to amend this section to replace outdated text with current terminology, specifically by substituting the term 'medical physicist' for 'radiological physicist.'

Proposed § 37.43(d) would describe NIOSH's authority to conduct a physical inspection of the applicant's facility to determine if the requirements of this subpart are being met. We propose to amend this section from the existing § 37.42(e) by updating outdated terminology.

Proposed § 37.43(e) would allow NIOSH the discretion to require a facility to resubmit radiographs of a test object, sample radiographs, or a Facility Certification Document for quality control purposes. It would also establish the conditions under which NIOSH may suspend or withdraw a facility's approval and how notice must be given. We propose to amend this section from the existing § 37.43(f) by updating outdated terminology.

Proposed § 37.43(f) would require that facilities establish a formal quality assurance program conforming to standards published by the American Association of Physicists in Medicine and incorporated by reference here. This provision would replace existing § 37.41(h)(9), which requires that facilities establish a formal quality assurance program, with more specific quality assurance program guidelines. We propose that the program must be written, address radiation exposures, equipment maintenance, and image quality, and conform to the referenced professional standards. Several years ago, NIOSH initiated an image quality feedback program to try to improve the film quality; NIOSH therefore wishes to ensure that the facilities have documented quality assurance programs. This provision will also permit NIOSH to easily request copies of the documentation, and thus more easily determine if a facility has adequately addressed their image quality issues.

Proposed § 37.43(g) would add the explicit requirement that facilities adhere to Federal, State, and local laws, as applicable, to protect the confidentiality and privacy of coal miners participating in the Program. Through this provision, NIOSH seeks to ensure that X-ray facilities maintain miners' sensitive health information securely and protect it from disclosure to the extent permitted by law.

Section 37.44 Approval of Radiographic Facilities That Use Digital Radiography Systems

Proposed § 37.44 would establish standards for the approval of radiographic facilities that use digital radiography systems. These standards mirror those for film-screen technology.

Proposed § 37.44(a)(1) would specify the requirements for a facility approval application, including an image of a test object, and six or more sample radiographs of quality acceptable to one or more individuals selected by NIOSH from the panel of B Readers and a qualified medical physicist. The existing requirements for facilities to demonstrate radiograph quality are continued (§ 37.42(b)) but to reduce the burden on facilities, radiographs made up to 60 days prior to the application may be submitted. The time extension (from the existing 15 days for film-based systems) eases the burden on applicants by giving them a longer window of time to select a representative image, while continuing to ensure that the images that are submitted reflect the facility's contemporary image quality; changes in digital image quality are unlikely to occur in the time frame indicated (*i.e.,* 60 days). In the past, wet systems such as film processors and chemicals could get diluted or dirty in shorter times when many films were processed, however, because there are no liquids and very few moving parts in digital systems, the time frame for quality deterioration is longer, and thus a longer time is more convenient but still should be representative of the digital image quality. This provision would also require the image files to be submitted using a secure electronic file transfer method approved by NIOSH, or on standard portable media and meet the current DICOM specifications for diagnostic media interchange.

Proposed § 37.44(a)(2) would specify the contents of the X-ray Facility Certification Document. This paragraph would continue the existing requirement for documentation and inspection of eligible facilities by a qualified expert within 1 year preceding the date of the application (§ 37.42(c)), and would clarify that the expert must be a medical physicist. NIOSH has always expected that a medical physicist perform these evaluations, and now intends to codify that expectation.

Proposed § 37.44(b) would require that facilities maintain relevant local, State, or Federal licensure and certification. The existing requirement that radiographic facilities conform to applicable State and Federal regulations (§ 37.43) is continued.

Proposed § 37.44(c) would allow NIOSH the discretion to conduct a site inspection of the facility. Existing regulations for film (§ 37.42(e)) specify periodic inspections, and this requirement is continued for digital systems.

Proposed § 37.44(d) would allow NIOSH the discretion to require a facility to resubmit image files of the test object, sample radiographs, or

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Comparison of digital radiographs with film radiographs for the classification of pneumoconiosis. Acad Radiol 16(6):669–677.

Suganuma N, Murata K, Kusaka Y [2008]. CR and FPD DR chest radiographic image parameters for the pneumoconioses: The Japanese approach and experience. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to digital chest radiographic images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

Franzblau A, Kazerooni EA, Goodsitt M [2009]. Digital X-ray imaging in pneumoconiosis screening: Future challenges for the NIOSH B Reader Program. In: NIOSH. The NIOSH B Reader Certification Program: Looking to the future. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2009–140.

Facility Certification Document. The provision would also authorize NIOSH to suspend or withdraw a facility's approval when warranted due to noncompliance with provisions of this rule.

Proposed § 37.44(e) would require that facilities have a qualified medical physicist on site or available as a consultant. To minimize risks and assure standardized and predictable image quality from sophisticated digital radiography systems, facilities must have available highly trained individuals who are skilled in evaluating the equipment, methods, and procedures.[18]

Proposed § 37.44(f) would require that facilities document the findings by the medical physicist that each image acquisition system has met initial specifications and standards of the equipment manufacturer and performance testing. Since the 1980s, major advances have occurred in the practice of clinical radiology, most notably in the widespread adoption of digital technologies and systems for image acquisition, storage, transfer, and display.[19] These digital technologies offer unique benefits for the identification and classification of pneumoconiosis, but due to the added complexities of digital radiography systems compared with film-screen radiology, these benefits may only be realized with proper implementation and utilization of the digital systems.[20] To assure that the systems perform at the level required to meet the purposes of this Part, performance must be assessed by qualified individuals.

Proposed § 37.44(g) would require facilities to implement a quality assurance program, and would incorporate by reference the standards set by the American Association of Physicists in Medicine. This provision continues the existing requirement for a quality control program, (§ 37.41(h)(9)) and further specifies professionally recommended procedures that must be an integral part of the operation of each digital radiography system. To ensure that radiologic examinations required under this Part are safe, reliable, and accurate, facilities that are approved to provide examinations using digital equipment must demonstrate that personnel, equipment, and procedures adhere to professionally accepted guidelines.[21]

Proposed § 37.44(g)(1) would require that facility approval applications include a comprehensive assessment by a qualified medical physicist within 12 months prior to application. This paragraph would incorporate by reference guidelines established by the American Association of Physicists in Medicine. This provision continues the existing requirement (§ 37.42(c)).

Proposed § 37.44(g)(2) would require the use of radiographic technique charts developed for the specific X-ray system and detector combination used at the facility. This section would incorporate by reference monitoring methods specified by the American Association of Physicists in Medicine, and radiation exposure reference levels specified by the American College of Radiology. Unlike film-screen radiology, digital radiography systems are susceptible to *dose creep*.[22] Dose creep in this setting involves increasing examinee radiation exposures over time for similar types of examinations (*e.g.,* chest radiographs) performed at a facility. The tendency to increase radiation exposures over time, beyond the levels necessary, results from the characteristics of digital image detectors (which provide excellent image quality when images are overexposed, but suboptimal image quality when underexposed) combined with the desire on the part of facilities to avoid repeat examinations. For this reason, as recommended by professional bodies, facilities utilizing digital systems for examinations under this Part are required to take additional steps to ensure optimal exposures, and to maintain records of annual monitoring and evaluation of representative radiation exposures over time, using standardized methods, metrics, and documentation.[23]

Proposed § 37.44(g)(3) would require that the performance of a digital radiography device be monitored according the recommendations of the medical physicist. Facilities would be required to maintain documentation upon the completion of quality assurance testing, and make it available to NIOSH for 5 years. NIOSH believes that retaining such records for 5 years is already standard business practice. This provision would also specify that certain tests are not required as a part of the quality assurance program for digital radiography systems (digital image acquisition systems in which the X-ray signals received by the image detector are converted to electronic signals without movable cassettes). This section provides more detailed guidance specific to the contemporary types of digital systems.

Proposed § 37.44(g)(4) would require that facilities maintain documentation on the implementation and monitoring of policies and procedures required under this section. Documentation of key metrics is essential for facility management to assure adherence to internal policies, and provides a mechanism for NIOSH inspections to determine if the purposes of this Part are being met.

Proposed § 37.44(h) would add the explicit requirement that facilities adhere to Federal laws to protect the confidentiality and privacy of coal miners participating in the program.

[18] Samei E [2008]. Acquisition of Digital Chest Images for Pneumoconiosis Classification: Methods, Procedures, and Hardware. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[19] NIOSH [2008]. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[20] Samei E, Ravin CE [2008]. Assuring image quality for classification of digital chest radiographs. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[21] Franzblau A, Kazerooni EA, Goodsitt M [2009]. Digital X-ray imaging in pneumoconiosis screening: Future challenges for the NIOSH B Reader Program. In: NIOSH. The NIOSH B Reader Certification Program: Looking to the future. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2009–140.

NIOSH [2008]. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[22] Schaefer-Prokop C, Neitzel U, Venema HW, Uffmann M, Prokop M [2008]. Digital chest radiography: An update on modern technology, dose containment and control of image quality. Eur Radiol 18(9):1818–1830.

[23] Shepard SJ, Wang J, Flynn M, Gingold E, Goldman L, Krugh K, Leong DL, Mah E, Ogden K, Peck D, Samei E, Willis C [2009]. An exposure indicator for digital radiography. Report of AAPM Task Group 116. College Park, MD: American Association of Physicists in Medicine. AAPM Report No. 116.

ACR Practice Guideline for diagnostic reference levels in medical X-ray imaging. Revised 2008 (Res. 3).

ACR Technical Standard for diagnostic medical physics performance monitoring of radiographic and fluoroscopic equipment. Revised 2006 (Res. 29,16g,17).

NIOSH seeks to ensure that miners' sensitive health information remains secure and is protected to the extent permitted by law.

Section 37.45 Protection Against Radiation Emitted by Radiographic Equipment

This proposed provision would require that radiographic equipment conform to applicable State, territorial, and Federal regulations. Where no State, territorial or Federal regulations apply, the section would incorporate by reference the recommendations of the NCRP. This provision is unchanged from the existing § 37.45, although references for the NCRP recommendations and contact information would be updated.

Section 37.50 Interpreting and Classifying Chest Radiographs—Film

Proposed procedures for classifying radiographs would be unchanged from the existing § 37.50, but for updating the requirement that images be interpreted and classified in accordance with the ILO International Classification of Radiographs for Pneumoconioses, 2011 edition.[24] The revised 2011 edition of the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses extends the applicability of the prior edition of the Classification to digital radiographic images of the chest. The proposed section would retain the existing provision that radiographs must be interpreted by an A or B Reader who has access to a complete set of the ILO Classification standard images, but would clarify that initial interpretations and notification of any findings other than that of pneumoconiosis shall be performed by a qualified physician. Provisions referring to view boxes would also be retained. Further, this section would be newly designated to apply only to film-screen radiographs.

Section 37.51 Interpreting and Classifying Chest Radiographs—Digital Radiography Systems

Proposed § 37.51(a) and (b) are similar to the first two provisions of § 37.50 for film radiographs, discussed above. Clinical readings of digital chest radiographs obtained under this Part must be performed by physicians who are qualified and licensed and who read chest radiographs in the normal course of practice. However, in NIOSH's judgment, it would not be feasible to require that all physicians who provide the initial readings demonstrate proficiency with the ILO Classification of digital radiographs as specified in this Section. Such physicians are not sufficiently available to conduct these initial readings for coal miners in all locations in the United States. Thus the proposed rule specifies that a qualified and licensed physician who reads chest radiographs in the normal course of practice is qualified to provide interpretation and notification of any abnormal findings other than pneumoconiosis.

The ILO has recently authorized the use of the ILO Classification for digital images and authorized a set of standard digital image files for use during classification. Paragraph § 37.51(b) would specify that the classification of digital images be done ''in a manner consistent with the ILO International Classification of Radiographs of Pneumoconioses 2011.''

Proposed § 37.51(c) would require radiograph interpreters to have available to them a complete set of NIOSH-approved standard digital chest radiographic images. The ILO classification system has provided a standardized approach to recognizing, describing, and quantifying abnormalities on the chest radiograph caused by dust.[25] A set of standard film images is provided by the ILO and required to be used in side-by-side comparisons when classifying radiographs. These ILO standard images were originally obtained using film-screen radiography, without application of edge enhancement or noise reduction software. Research using film-screen radiographs and classifications based upon the current ILO standard film radiographs has demonstrated that chest radiograph classification results correlate significantly with objective independent measures of dust exposure or lung dust content.[26] To maintain the documented validity of the ILO classification system, the rule specifies that each reader compare digital images submitted under this regulation with NIOSH-approved digital versions of the standard images, and that no software modification of the standard images can be permitted.

Proposed § 37.51(d) would require that viewing systems enable readers to display the chest image at full resolution, side-by-side with the selected NIOSH-approved standard image for comparison. This section would establish specifications for image display devices, including megapixels (MP) and bit depth; displays and associated graphics cards should meet the specifications of the current DICOM standard. This section would also set standards for display system luminance, relative noise, linearity, modulation transfer function (MTF), frequency, and glare by incorporating AAPM recommendations by reference. Finally, this section would require that displays be situated to minimize front surface glare.

Visualization of the shadows on the chest radiograph caused by dust-related fibrosis is one of the most difficult challenges in medical diagnostic imaging. The viewing systems must provide sufficient luminance and gray scale depth to demonstrate the required subtle contrasts, and sufficient display size and density of pixels to reflect the resolution of the image file provided by the image detectors and required to visualize the fine linear fibrotic shadows.[27] Research studies have demonstrated that reader recognition of pneumoconiosis on digital radiology systems can be equivalent to that achieved using film-screen radiology systems when appropriate system specifications and devices are employed.[28] Additionally, adherence to the grayscale standard display function is required to assure that the appearance

[24] International Labour Office [2011]. Guidelines for the use of ILO International Classification of Pneumoconiosis, revised edition 2011). Geneva, Switzerland: International Labour Office. Occupational Safety and Health Series No. 22 (Rev. 2011).

[25] *Id.*

[26] Ruckley VA, Fernie JM, Chapman JS, Collings P, Davis JM, Douglas AN, Lamb D, and Seaton A [1984]. Comparison of radiographic appearances with associated pathology and lung dust content in a group of coalworkers. Br J Ind Med 41(4): 459–467.

Cockcroft A, Lyons JP, Andersson N, and Saunders MJ [1983]. Prevalence and relation to underground exposure of radiological irregular opacities in South Wales coal workers with pneumoconiosis. Br J Ind Med 40(2): 169–172.

[27] Flynn MJ [2008]. Image presentation: Implications of processing and display. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[28] Franzblau A, Kazerooni EA, Sen A, Goodsitt MM, Lee SY, Rosenman KD, Lockey JE, Meyer CA, Gillespie BW, Petsonk EL, Wang ML [2009]. Comparison of digital radiographs with film radiographs for the classification of pneumoconiosis. Acad Radiol 16(6):669–677.

Sen A, Lee SY, Gillespie BW, Kazerooni EA, Goodsitt MM, Rosenman KD, Lockey JE, Meyer CA, Petsonk EL, Wang ML, Franzblau A [2010]. Comparison of reliability of classification for pneumoconiosis of film and digital radiographs: A modeling approach. Acad Radiol 17(4):511–519.

Laney AS, Petsonk EL, Wolfe AL, Attfield MD [2009]. Comparison of storage phosphor computed radiography with conventional film-screen radiography in the recognition of pneumoconiosis. Eur Respir J, published ahead of print November 19, 2009.

of the images is independent of the specific digital device used for display.

Proposed § 37.51(d)(4) would also require that the measurements of pleural shadows and parenchymal opacities shall be taken using calibrated software measuring tools. This section would also require that, if possible, a record be made of the presentation state. Each individual reader is generally offered the option to select a specific setting that he or she judges to optimize the display characteristics of the chest radiographic image during the classification process; however, recording of the presentation states and annotations would be required (with compatible software) and would permit subsequent evaluation, using a Grayscale Standard Display Function (GSDF) compliant monitor, of the specific image that was displayed and interpreted by the reader who performed the classification.[29]

Proposed § 37.51(e) would require that quality control procedures for devices used to display images for classification comply with the recommendations of the American Association of Physicists in Medicine, which are incorporated by reference. Further, this section would require that if automatic quality assurance systems are used, regular visual inspection also be performed using test patterns recommended by the medical physicist. Periodic maintenance and assessment of the display devices is essential to document that performance continues to meet current professional recommendations.[30] Because various automated systems may not detect all defects in digital display devices (such as distortion, dropout of pixels, or surface reflections), periodic visual inspections are also important to assure the display performance is adequate.

Proposed § 37.51(f) would establish that the classification of digitally-acquired radiographs be based on the viewing of images displayed as soft copies, and not as hard copy printed transparencies. Further, proposed § 37.51(g) would prohibit the use of digitized copies of film-screen acquired images. There is currently no sufficient scientific consensus regarding the equivalence of classifications performed using either 1) hard copies of digitally-acquired images or 2) digitized versions of film-screen radiographs in comparison to classifications performed using traditional film screen radiographic methods. For this reason, classifications based upon these two alternative approaches will not be accepted at this time.[31]

Section 37.52 Proficiency in the Use of Systems for Classifying the Pneumoconioses

Proposed § 37.52(a) and (b), establishing the A and B Reader approval programs, would be modified from existing § 37.51 to make clarifications in the current requirements and update older terminology. Section 37.52(a)(3) would clarify that initial clinical interpretations and notification of findings other than pneumoconiosis under § 37.51(a) must be provided by a qualified physician who has all required licensure and privileges, and interprets chest radiographs in the normal course of practice. Proposed § 37.52(b)(1) would retain the requirement under existing § 37.51(b)(1) that B Reader approval prior to October 1, 1976 be terminated.

Proposed § 37.52(b)(2) would retain the requirement under existing § 37.51(b)(2) that physicians who desire to be B Readers demonstrate their proficiency in evaluating chest radiographs by taking an examination. The 6-hour initial certification examination was commissioned by NIOSH and developed under a contract through the American College of Radiology by the Department of Radiology and Radiological Science, Johns Hopkins School of Medicine. The test has been given about once a month by NIOSH since 1978. Beginning in 1984, physicians who wish to maintain B reader status have been required to pass a 3-hour recertification examination every 4 years. Examinees for recertification who do not obtain a passing grade are permitted to take the initial 6-hour certification examination at the next available opportunity. Examinees who do not obtain a passing grade on the 6-hour certification examination must wait 6 months before they are eligible to sit again for the examination. The performance of the examination has been described in two manuscripts published in the peer-reviewed literature.[32]

The examination will be based on either film or digital images. The existing provision would be modified to indicate that each physician desiring to take the digital version of the B Reader examination will be provided with a complete set of the NIOSH-approved digital standard reference radiographs. NIOSH intends to offer both the film and digital versions of the examination for a number of years. A satisfactory grade in either examination will qualify the physician to interpret both formats. NIOSH has not found that the format of the exam has any effect on performance, and finds no justification for requiring that a prospective B Reader take both versions of the exam. NIOSH welcomes public comment on the potential benefits as well as the disadvantages to requiring prospective readers to demonstrate competence in classifying both film and digital images.

Finally, § 37.52(c) would require that physicians who wish to participate in the A and B Reader program familiarize themselves with the necessary components for attainment of reliable classification of chest radiographs for the pneumoconioses. The proposed requirement that prospective A and B Readers review NIOSH guidance on radiographic classification is included to ensure that each reader has studied recommended classification methods

[29] Samei E, Ravin CE [2008]. Assuring image quality for classification of digital chest radiographs. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

[30] *Id.*

[31] Samei E. Acquisition of digital chest images for pneumoconiosis classification: Methods, procedures, and hardware. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to Digital Chest Radiographic Images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

Franzblau A, Kazerooni EA, Sen A, Goodsitt MM, Lee SY, Rosenman KD, Lockey JE, Meyer CA, Gillespie BW, Petsonk EL, Wang ML [2009]. Comparison of digital radiographs with film radiographs for the classification of pneumoconiosis. Acad Radiol 16(6):669–677.

Suganuma N, Murata K, Kusaka Y [2008]. CR and FPD DR chest radiographic image parameters for the pneumoconioses: The Japanese approach and experience. In: NIOSH. Application of the ILO International Classification of Radiographs of Pneumoconioses to digital chest radiographic images: A NIOSH Scientific Workshop. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2008–139.

Franzblau A, Kazerooni EA, Goodsitt M [2009]. Digital X-ray imaging in pneumoconiosis screening: Future challenges for the NIOSH B Reader Program. In: NIOSH. The NIOSH B Reader Certification Program: Looking to the future. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. DHHS (NIOSH) Publication No. 2009–140.

[32] Morgan RH. Proficiency examination of physicians for classifying pneumoconiosis chest films. Am J Roentgenology 1979;132:803–08.

Wagner GR, Attfield MD, Kennedy RD, Parker JE. The NIOSH B Reader Certification Program—An update report. Journal of Occupational Medicine. 1992; 34:879–884.

and approaches. The referenced NIOSH guidance document is newly-developed and released;[33] approval as an A or B Reader requires this basic level of knowledge.

Records pertaining to the provisions in § 37.52 are maintained by NIOSH under CDC/ATSDR Privacy Act System of Records Notice 0920–0001, Certifying Interpreting Physician File.

Section 37.53 Method of Obtaining Definitive Interpretations

Proposed § 37.53 would maintain the standards in existing § 37.52, which establishes that radiographs will be independently interpreted by an A Reader and B Reader, or two B Readers, whose classifications must be in agreement as defined in § 37.53(b); if sufficient agreement is lacking, NIOSH shall obtain a third interpretation. Text added to § 37.53(a) amends the existing provision to clarify procedures in the event that independent classifications from three B Readers do not demonstrate sufficient agreement. In that case, the final determination would be based upon the median (middle) classification of five interpretations derived from the three initial readings plus two other classifications from B Readers selected from the panel. This provision is intended to codify the process used to resolve disagreements among three or more B Readers. Text added to § 37.53(b) would clarify that substantial agreement is assessed by NIOSH after complete classifications are received on either a paper or electronic version of the standard Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8).

Section 37.54 Notification of Abnormal Radiographic Findings

Proposed § 37.54, redesignated from § 37.53, would be revised to update outdated terminology. The provision would also allow the first reader to communicate certain information directly to the miner, including abnormal findings other than pneumoconiosis. The notification procedure is intended to facilitate and expedite the process by which a miner is informed of potentially important medical problems and could seek treatment.

Notification of important results to miners routinely occurs twice, providing a particularly robust notification process. The first notification is provided by the first physician to review a chest image in the community, who is required to provide documentation of miner notification to NIOSH. Subsequently, the image is sent to NIOSH and reviewed by NIOSH B readers. Within 60 days of completion of the physician readings, NIOSH will send a letter to each miner describing all findings in layman's terminology, and recommending a specific course of action appropriate to the findings. Current regulations specify 60 days for receipt of the letters describing pneumoconiosis and any other findings. From many years of experience, NIOSH has found this time interval to be both appropriate and reasonable. Text for this letter is standardized, and has been used by CWHSP for many years. A booklet describing local medical and other resources and contact information will be included with each letter.

Section 37.60 Submitting Required Chest Radiographs and Miner Identification Documents

Proposed § 37.60 would be essentially unchanged from existing § 37.60, which establishes the protocol for submitting radiographs. Paragraph (a)(1) would also allow for the submission of image files for digital radiographs, and permit the use of either hard copy or electronic versions of the forms. We propose to strike the reference to a pre-employment physical examination from paragraph (d) to be consistent with the requirements of the Americans with Disabilities Act.

Records pertaining to the provisions in § 37.60 are maintained by NIOSH under CDC/ATSDR Privacy Act System of Records Notice 0920–0149, Morbidity Studies in Coal Mining, Metal and Non-Metal Mining and General Industry.

Section 37.70 Review of Interpretations

This section would be amended only to update terminology. Proposed § 37.70(a) would retain the existing requirement that, in the situation in which a mine plan provides an A reader to perform the first reading of a miner's radiograph, a miner may request, and NIOSH will obtain, an additional classification of his or her radiograph, performed by a B reader. Proposed § 37.70(b) would retain the existing requirement that allows a mine operator who is directed by MSHA to transfer a miner to a less dusty atmosphere based on a recent examination to request that NIOSH review its findings. Terminology in both (a) and (b) would be updated.

Section 37.80 Availability of Records for Radiographs

Proposed § 37.80 would remain unchanged from the existing requirement. Terminology in this section would be updated.

B. Subpart—Autopsies

Section 37.200 Scope

Proposed § 37.200 would remain unchanged from the existing explanation that provisions in this subpart establish conditions under which pathologists will be paid to conduct autopsies on deceased miners.

Section 37.201 Definitions

Proposed § 37.201 would retain the existing definitions for Secretary, miner, and pathologist, but would update ''ALFORD,'' in the existing provision to ''NIOSH.''

Section 37.202 Payment for Autopsy

Proposed § 37.202 would retain the existing provision setting forth circumstances under which a pathologist may be paid by the Secretary for performing an autopsy.

Section 37.203 Autopsy Specifications

Proposed § 37.203 would retain the existing standards establishing the manner in which autopsies are conducted.

Section 37.204 Procedure for Obtaining Payment

Proposed § 37.204 would retain the existing procedure for submitting a claim for payment to NIOSH (''NIOSH'' would be updated, replacing ''ALFORD'').

IV. Regulatory Assessment Requirements

A. Executive Order 12866 and Executive Order 13563

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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule is being treated as a ''significant'' action under E.O. 12866. It provides for the use of digital radiography systems in the Coal Workers' Health Surveillance Program administered by NIOSH under 42 CFR

[33] NIOSH [2011]. NIOSH Guideline: Application of Digital Radiography for the Detection and Classification of Pneumoconiosis. DHHS (NIOSH) Publication Number 2011–198. August 2011. *http://www.cdc.gov/niosh/docs/2011-198/. Accessed November 16, 2011.*

part 37, in cooperation with coal mine operators, to monitor and protect the health of U.S. coal miners, particularly for the prevention of CWP. The current regulations at 42 CFR part 37 only allow for the use of film-screen radiography systems in this program. The addition of digital X-ray standards in part 37 would not require mine operators to change their plans to accommodate digital radiographs, but it is expected to substantially increase the amount of access miners will have to radiograph facilities because the use of film-screen radiography is declining markedly throughout the United States and specifically in areas where coal mining is located and where coal miners live. In fact, many clinics participating in the Program have indicated that they are maintaining their outdated X-ray film capabilities only because of Program requirements, and that they intend to switch to digital radiography when NIOSH allows its use by promulgating the rule proposed here. In general, most health care facilities have abandoned the use of film-based X-rays. Mammography was the last mainstream radiology procedure that required use of film; many facilities made the final switch to digital several years ago when digital mammography systems became available.

Increased access to radiograph facilities that offer digital X-rays is expected to result in cost savings to coal miners because they will not have to drive as far to visit a suitable clinic.

Digital radiographs are more cost-effective than their film-based counterparts because they do not require costly chemical processing, they eliminate the need for a separate device to develop the image, and they avoid costs associated with managing and archiving hard-copy images. Over the past 5 years approximately 100 clinics have submitted film-screen radiographs to CWHSP. NIOSH queried several clinics on the costs associated with film-screen radiography, including equipment maintenance, chemicals, film, and processing. Based on the responses, NIOSH believes that the cost to facilities of maintaining film X-ray technology to provide radiographs for approximately 2,500 coal miners is between $7,000 and $15,000 per clinic per year. Because NIOSH expects that most facilities participating in the Program will switch entirely to digital radiography when this rule is promulgated, we estimate a one-time cost savings to facilities that currently provide both film and digital radiographs of between $700,000 and $1,500,000 after they have discontinued the use of film radiographs. Although this rule does not require any facility to upgrade to digital technology, facilities that choose to do so will necessarily incur costs associated with its acquisition. NIOSH invites public comment on these estimates.

The proposed rule would not require any radiography facility to perform digital radiographs for this NIOSH program. Facilities may continue to perform film-screen radiography under the current requirements of Part 37 applicable to film-screen radiography, which would not be substantially changed by this proposed rule.

The proposed provisions for using the DICOM standard and incorporating by reference standard best practices for digital radiography used in lung imaging ensure that the proposed requirements reflect standard practice and technology. For these reasons, the rule provisions allowing for the use of digital radiography and specifying equipment and practice parameters would not impose any additional costs on coal mine operators who provide for their miners' participation in this program nor on the radiography facilities that serve the participating coal miners.

The proposed rule would establish a new requirement for coal mine operators to provide to NIOSH a roster of current miners as proposed under § 37.4(a)(3). The provision of this roster to NIOSH is current practice by almost all of the approximately 500 U.S. underground coal mine operators; therefore codifying this practice in regulation will not result in any additional cost to mine operators. For these reasons, the proposed rule is not considered economically significant, as defined in § 3(f)(1) of E.O. 12866.

The rule is consistent with the requirements of 42 U.S.C. 7384n(c). The rule does not interfere with State, local, or tribal governments in the exercise of their governmental functions.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. This rule would establish standards for the delivery of digitally-acquired chest radiographs for underground coal miners. It would not impose any new requirements on small radiographic facilities that participate in the Coal Workers' Health Surveillance Program administered by NIOSH under 42 CFR part 37. These facilities may continue to exclusively use film-screen technology for radiography under provisions that would be essentially unchanged by this rulemaking. The rule would benefit these facilities by allowing and facilitating their transition to digital radiography for the purposes of this program. In this respect, the reliance in the proposal on the DICOM standards, standard technology, and current best practices for lung imaging radiography ensure that the rule is consistent with current medical practices in digital radiography. It should also be noted that if this standard permits some facilities to switch entirely to digital imaging, rather than maintaining two duplicate technologies, the facilities may be able to achieve savings in radiography operating costs, as discussed in the Executive Orders 12866 and 13563 analysis above. The proposed standard would also introduce a substantial benefit in allowing the participation in the program of radiography facilities that solely use digital radiography; such facilities currently are prohibited from participation due to the current lack of digital radiography standards for the program under part 37.

This proposed rule should increase access to medical facilities for small and larger coal mine operators, since many medical facilities exclusively use digital radiography or are transitioning to this technology. The rule may also decrease the cost to coal mine operators of providing X-ray screenings to miners. Lower cost is likely to be one of the factors in the trend among radiography facilities to adopt or switch entirely to digital radiography. In any event, allowing and facilitating the provision of digital radiography under part 37 would impose no new costs on small coal mine operators.

The proposed rule would establish a new requirement for coal mine operators to provide to NIOSH a roster of current miners as proposed under § 37.4(a)(3). The provision of this roster to NIOSH is current practice by almost all coal mine operators. NIOSH estimates that, of 488 underground coal mines that can be considered small as of the first quarter of 2011,[34] 130 coal mine plans are submitted to the Agency annually. NIOSH further estimates that a clerical worker spends 0.5 hours per year preparing the roster. According to the Bureau of Labor Statistics, the average salary of a coal mine clerical worker is $17.38/hour; NIOSH estimates the annual cost for an individual coal

[34] U.S. Department of Labor, Mine Safety and Health Administration. Mining Industry Accident, Injuries, Employment, and Production Data—Address & Employment Self-Extracting Files. *http://www.msha.gov/stats/part50/p50y2k/aetable.htm.* Accessed July 7, 2011.

mine operator to supply a roster to NIOSH is approximately $9 and the total cost to all coal mines combined amounts to approximately $1170 annually. In NIOSH's judgment, this $9 cost would not be significant for any coal mine operator. Therefore, a regulatory flexibility analysis as provided for under the RFA is not required. NIOSH certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. This proposed rule continues to impose the same information collection requirements as under the current rule, including the submission of the following forms:

- Roentgenographic Interpretation Form [CDC/NIOSH (M)2.8]
- Miner Identification Document [CDC/NIOSH (M)2.9]
- Coal Mine Operator's Plan [CDC/NIOSH (M)2.10]
- Facility Certification Document [CDC/NIOSH (M)2.11]
- Interpreting Physician Certification Document [CDC/NIOSH (M)2.12]
- Consent, Release, and History Form [CDC/NIOSH (M)2.6]

These forms are approved by OMB for data collected under the CWHSP (OMB Control No. 0920–0020, exp. June 30, 2014).

The additional reporting burden associated with the Coal Mine Operator's Plan which would require underground coal mine operators to submit a roster of current employees (§ 37.4(a)(3)), and the Facility Certification Document which would be required of participating digital radiography facilities (§ 37.44(a)(2)), are both accounted for in the OMB information collection approval referenced above. There is no additional recordkeeping burden associated with the quality assurance program referenced in § 37.44(g) because this provision reflects standard industry practice and does not impose any new recordkeeping requirements.

Type of respondent	Form name and No.	Number of respondents	Number of responses per respondent	Hours/ response	Response burden (in hrs)
Physicians (B Readers)	Roentgenographic Interpretation Form—CDC/NIOSH (M) 2.8.	10,000	1	3/60	500
Miners	Miner Identification Document—CDC/NIOSH (M) 2.9.	5,000	1	20/60	1,667
Coal Mine Operators	Coal Mine Operator's Plan—CDC/NIOSH (M) 2.10.	200	1	30/60	100
Supervisors at X-ray Facilities	Facility Certification Document—CDC/NIOSH (M) 2.11.	100	1	30/60	50
Physicians (B Readers)	Interpreting Physician Certification Document—CDC/NIOSH (M) 2.12.	300	1	10/60	50
Spirometry Test—Coal Miners	No form involved	2,500	1	20/60	833
X-ray—Coal Miners	No form involved	5,000	1	15/60	1250
Pathologist	(Invoice)	50	1	5/60	4
Pathologist	(Final diagnosis)	50	1	5/60	4
Next-of-Kin	Consent, Release, and History Form—CDC.NIOSH (M) 2.6.	50	1	15/60	13
Totals		23,250			4,471

D. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report the promulgation of this rule to Congress prior to its effective date. The report will state that the Department has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector.

F. Executive Order 12988 (Civil Justice)

This rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. Chest radiograph interpretations that result in a finding of pneumoconiosis may be an element in claim processing and adjudication conducted by DOL's Black Lung Compensation Program. This proposed rule would affect radiographs submitted to DOL for the purpose of reviewing and administering those claims. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

G. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The 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.''

H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

J. Plain Writing Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the proposed rule consistent with the Federal Plain Writing Act guidelines.

V. Proposed Rule

List of Subjects in 42 CFR Part 37

Black lung benefits, Incorporation by reference, Lung diseases, Mine safety and health, Occupational safety and health, Pneumoconiosis, Respiratory and pulmonary diseases, Underground coal mining, Workers' compensation, X-rays.

Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR part 37 as follows:

PART 37—SPECIFICATIONS FOR MEDICAL EXAMINATIONS OF UNDERGROUND COAL MINERS

1. The authority citation for part 37 continues to read as follows:

Authority: Sec. 203, 83 Stat. 763 (30 U.S.C. 843), unless otherwise noted.

Subpart—Chest Radiographic Examinations

2. Revise § 37.1 to read as follows:

§ 37.1 Scope.

The provisions of this subpart set forth the specifications for giving, interpreting, classifying, and submitting chest radiographs required by section 203 of the Act to be given to underground coal miners and new miners.

3. Revise § 37.2 to read as follows:

§ 37.2 Definitions.

Any term defined in the Federal Mine Safety and Health Act of 1977 and not defined below shall have the meaning given it in the Act. As used in this subpart:

Act means the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, *et seq.*).

Chest radiograph means a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film or digital radiography systems.

Convenient time and place with respect to the conduct of any examination under this subpart means that the examination must be given at a reasonable hour in the locality in which the miner resides or a location that is equally accessible to the miner. For example, examinations at the mine during, immediately preceding, or immediately following work and a ''no appointment'' examination at a medical facility in a community easily accessible to the residences of a majority of the miners working at the mine, shall be considered of equivalent convenience for purposes of this paragraph.

Digital radiography systems, as used in this context, include both Digital Radiography (DR) and Computed Radiography (CR).

(1) *Computed radiography* (CR) is the term for digital X-ray image acquisition systems that detect X-ray signals using a cassette-based photostimulable storage phosphor. Subsequently, the cassette is processed using a stimulating laser beam to convert the latent radiographic image to electronic signals which are then processed and stored so they can be displayed.

(2) *Digital radiography* (DR) is the term used for digital X-ray image acquisition systems in which the X-ray signals received by the image detector are converted nearly instantaneously to electronic signals without movable cassettes.

ILO Classification means the below-referenced classification of radiographs of the pneumoconioses system devised by an international committee of the International Labour Office (ILO), including a complete set of standard film radiographs or digital chest image files available from the ILO or other set of chest image files accepted by NIOSH as equivalent.

MSHA means the Mine Safety and Health Administration, Department of Labor.

Miner means any individual including any coal mine construction worker who is working in or at any underground coal mine, but does not include any surface worker who does not have direct contact with underground coal mining or with coal processing operations.

NIOSH means the National Institute for Occupational Safety and Health (NIOSH), located within the Centers for Disease Control and Prevention (CDC). Within NIOSH, the Division of Respiratory Disease Studies (DRDS), Box 4258, Morgantown, WV 26504, formerly called the Appalachian Laboratory for Occupational Safety and Health, is the organizational unit that has programmatic responsibility for the chest radiographic examination program.

NIOSH representative means employees of CDC/NIOSH and employees of CDC contractors.

Operator means any owner, lessee, or other person who operates, controls, or supervises an underground coal mine or any independent contractor performing services or construction at such mine.

Panel of B Readers means the group of physicians that are currently approved by NIOSH as B Readers.

Pre-placement physical examination means any medical examination which includes a chest radiographic examination given in accordance with the specifications of this Part to a person not previously employed by the same operator. Such examinations should be conducted consistent with applicable law, including the Americans with Disabilities Act of 1990, which provides that pre-placement examinations take place only after an offer of employment has been made and subject to certain restrictions (42 U.S.C. 12112(d)).

Qualified medical physicist means an individual who is trained in evaluating the performance of radiographic equipment including radiation controls and facility quality assurance programs, and has the relevant current certification by a competent U.S. national board, or unrestricted license or approval from a U.S. state or territory.

Radiographic technique chart means a table which specifies the types of cassette, intensifying screen, film or digital detector, grid, filter, and lists X-ray machine settings (timing, kVp, mA) that enables the radiographer to select the correct settings based on the body habitus or the thickness of the chest tissue.

Radiologic technologist means an individual who has met the requirements for privileges to perform general radiographic procedures and for competence in using the equipment and software employed by the examining facility to obtain chest images as specified by the state or territory and examining facility in which such services are provided. Optimally, such an individual will have completed a formal training program in radiography leading to a certificate, an associate degree, or a bachelor's degree and participated in the voluntary initial certification and annual renewal of

registration for radiologic technologists offered by the American Registry of Radiologic Technologists.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

Soft copy means the image of a coal miner's chest radiograph acquired using a digital radiography system, viewed at the full resolution of the image acquisition system using an electronic medical image display device.

4. Revise § 37.3 to read as follows:

§ 37.3 Chest radiographs required for miners.

(a) *Voluntary examinations.* Every operator shall provide to each miner who is employed in or at any of its underground coal mines and who was employed in underground coal mining prior to December 30, 1969, or who has completed the required examinations under § 37.3(b) an opportunity for a chest radiograph in accordance with this subpart:

(1) Following August 1, 1978 NIOSH will notify the operator of each underground coal mine of a period within which the operator may provide examinations to each miner employed at its coal mine. The period shall begin no sooner than the effective date of these regulations and end no later than a date specified by NIOSH separately for each coal mine. The termination date of the period will be approximately 5 years from the date of the first examination which was made on a miner employed by the operator in its coal mine under the former regulations of this subpart adopted July 27, 1973. Within the period specified by NIOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

Example: NIOSH finds that between July 27, 1973, and March 31, 1975, the first radiograph for a miner who was employed at mine Y and who was employed in underground coal mining prior to December 30, 1969, was made on January 1, 1974. NIOSH will notify the operator of mine Y that the operator may select and designate on its plan a 6-month period within which to offer its examinations to its miners employed at mine Y. The 6-month period shall be scheduled between August 1, 1978 and January 1, 1979 (5 years after January 1, 1974).

(2) For all future voluntary examinations, NIOSH will notify the operator of each underground coal mine when sufficient time has elapsed since the end of the previous 6-month period of examinations. NIOSH will specify to the operator of each mine a period within which the operator may provide examinations to its miners employed at its coal mine. The period shall begin no sooner than 3½ years and end no later than 4½ years subsequent to the ending date of the previous 6-month period specified for a coal mine either by the operator on an approved plan or by NIOSH if the operator did not submit an approved plan. Within the period specified by NIOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

Example: NIOSH finds that examinations were previously provided to miners employed at mine Y in a 6-month period from July 1, 1979, to December 31, 1979. NIOSH notifies the operator at least 3 months before July 1, 1983 (3½ years after December 31, 1979) that the operator may select and designate on its plan the next 6-month period within which to offer examinations to its miners employed at mine Y. The 6-month period shall be scheduled between July 1, 1983, and July 1, 1984 (between 3½ and 4½ years after December 31, 1979).

(3) Within either the next or future period(s) specified by NIOSH to the operator for each of its coal mines, the operator of the coal mine may select a different 6-month period for each of its mines within which to offer examinations. In the event the operator does not submit an approved plan, NIOSH will specify a 6-month period to the operator within which miners shall have the opportunity for examinations.

(b) *Mandatory examinations.* Every operator shall provide to each miner who begins working in or at a coal mine for the first time after December 30, 1969:

(1) An initial chest radiograph, as soon as possible, but in no event later than 6 months after commencement of employment. An initial chest radiograph given to a miner according to former regulations for this subpart prior to August 1, 1978 will also be considered as fulfilling this requirement.

(2) A second chest radiograph, in accordance with this subpart, 3 years following the initial examination if the miner is still engaged in underground coal mining. A second radiograph given to a miner according to former regulations under this subpart prior to August 1, 1978 will be considered as fulfilling this requirement.

(3) A third chest radiograph 2 years following the second chest radiograph if the miner is still engaged in underground coal mining and if the second radiograph shows evidence of category 1 (1/0, 1/1, 1/2), category 2 (2/1, 2/2, 2/3), category 3 (3/2, 3/3, 3/+) simple pneumoconioses, or complicated pneumoconioses (ILO Classification).

(c) NIOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, NIOSH will notify the coal mine operator when the miner is to be given a second examination. The operator will be notified concerning a miner's third examination only with the miner's written consent, and the notice to the operator shall not state the medical reason for the examination nor that it is the third examination in the series. If the miner is notified by NIOSH that the third mandatory examination is due and the operator is not so notified, availability of the radiographic examination under the Coal Mine Operator's Plan (Form CDC/NIOSH (M)2.10) shall constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

(d) The opportunity for chest radiographs to be available by an operator for purposes of this subpart shall be provided in accordance with a plan which has been submitted and approved in accordance with this subpart.

5. Amend § 37.4 by revising paragraphs (a) introductory text, (a)(3), (a)(4), (a)(6), (a)(7), and (d) through (f) to read as follows:

§ 37.4 Plans for chest radiographic examinations.

(a) Every plan for chest radiographic examinations of miners shall be submitted on the Coal Mine Operator's Plan form (Form CDC/NIOSH (M)2.10) to NIOSH within 120 calendar days after August 1, 1978. In the case of a person who after August 1, 1978, becomes an operator of a mine for which no plan has been approved, that person shall submit a plan within 60 days after such event occurs. A separate plan shall be submitted by the operator and by each construction contractor for each underground coal mine which has a MSHA identification number. The plan shall include:

* * * * *

(3) The proposed beginning and ending date of the 6-month period for voluntary examinations (see § 37.3(a)), the estimated number of miners to be given or offered examinations during the 6-month period under the plan, and a roster specifying the names and current home mailing addresses of each miner covered by the plan;

(4) The name and location of the approved X-ray facility or facilities, and

the approximate date(s) and time(s) of day during which the radiographs will be given to miners to enable a determination of whether the examinations will be conducted at a convenient time and place;

* * * * *

(6) The name and address of the A or B Reader who will interpret and classify the chest radiographs. In the event a plan lists an approved facility with a digital radiography system, the name and address of the physician(s) who will perform the initial clinical interpretation.

(7) Assurances that:

(i) The operator will not solicit a physician's radiographic or other findings concerning any miner employed by the operator,

(ii) Instructions have been given to the person(s) giving the examinations that duplicate radiographs or copies of radiographs (including, for digital radiographs, copies of electronic files) will not be made, and to the extent that it is technically feasible for the imaging system used, digital radiographs and all related digital files shall be permanently deleted from the facility records or rendered permanently inaccessible following the confirmed transfer of such data to NIOSH, and that (except as may be necessary for the purpose of this subpart) the physician's radiographic and other findings, as well as the occupational history information obtained from a miner will not be disclosed in a manner that would permit identification of the individual with their information, and

(iii) The radiographic examinations will be made at no charge to the miner.

* * * * *

(d) The operator shall advise NIOSH of any change in its plan. Each change in an approved plan is subject to the same review and approval as the originally approved plan.

(e) The operator shall promptly display in a visible location on the bulletin board at the mine its proposed plan or proposed change in plan when it is submitted to NIOSH. The proposed plan or change in plan shall remain posted in a visible location on the bulletin board until NIOSH either grants or denies approval of it at which time the approved plan or denial of approval shall be permanently posted. In the case of an operator who is a construction contractor and who does not have a bulletin board, the construction contractor must otherwise notify its employees of the examination arrangements. Upon request, the contractor must show NIOSH written evidence that its employees have been notified.

(f) Upon notification from NIOSH that sufficient time has elapsed since the previous period of examinations, the operator will resubmit its plan for each of its coal mines to NIOSH for approval for the next period of examinations (see § 37.3(a)(2)). The plan shall include the proposed beginning and ending dates of the next period of examinations and all information required by paragraph (a) of this section.

6. Revise § 37.5 to read as follows:

§ 37.5 Approval of plans.

(a) If, after review of any plan submitted pursuant to this subpart, the Secretary determines that the action to be taken under the plan by the operator meets the specifications of this subpart and will effectively achieve its purpose, the Secretary will approve the plan and notify the operator(s) submitting the plan of the approval. Approval may be conditioned upon such terms as the Secretary deems necessary to carry out the purpose of section 203 of the Act.

(b) Where the Secretary has reason to believe that he or she will deny approval of a plan the Secretary will, prior to the denial, give reasonable notice in writing to the operator(s) of an opportunity to amend the plan. The notice shall specify the ground upon which approval is proposed to be denied.

(c) If a plan is denied approval, the Secretary shall advise the operator(s) in writing of the reasons for the denial.

7. Amend § 37.6 by revising paragraphs (a) and (d) to read as follows:

§ 37.6 Chest radiographic examinations conducted by the Secretary.

(a) The Secretary will give chest radiographs or make arrangements with an appropriate person, agency, or institution to give the chest radiographs and with A or B Readers to interpret the radiographs required under this subpart in the locality where the miner resides, at the mine, or at a medical facility easily accessible to a mining community or mining communities, under the following circumstances:

* * * * *

(d) Operators of mines selected by NIOSH to participate in the National Study of Coal Workers' Pneumoconiosis (an epidemiological study of respiratory diseases in coal miners) and who agree to cooperate will have all their miners afforded the opportunity to have a chest radiograph required hereunder at no cost to the operator. For future examinations and for mandatory examinations each participating operator shall submit an approvable plan.

8. Amend § 37.7 by revising paragraph (a) to read as follows:

§ 37.7 Transfer of affected miner to less dusty area.

(a) Any miner who, in the judgment of the Secretary based upon the interpretation of one or more of the miner's chest radiographs, shows category 1 (1/0, 1/1, 1/2), category 2 (2/1, 2/2, 2/3), or category 3 (3/2, 3/3, 3/+) simple pneumoconioses, or complicated pneumoconioses (ILO Classification) shall be afforded the option of transferring from his or her position to another position in an area of the mine where the concentration of respirable dust in the mine atmosphere is not more than 50 percent of the maximum respirable dust concentration permitted by MSHA, or if such level is not attainable in the mine, to a position in the mine where the concentration of respirable dust is the lowest attainable below the maximum respirable dust concentration permitted by MSHA.

* * * * *

9. Revise § 37.8 to read as follows:

§ 37.8 Radiographic examination at miner's expense.

Any miner who wishes to obtain an examination at the miner's own expense at an approved facility and to have the complete examination submitted to NIOSH may do so, provided that the examination is made no sooner than 6 months after the most recent examination of the miner submitted to NIOSH. NIOSH will provide an interpretation and report of the examinations made at the miner's expense in the same manner as if it were submitted under an operator's plan. Any change in the miner's transfer rights under the act which may result from this examination will be subject to the terms of § 37.7.

10. Revise § 37.20 to read as follows:

§ 37.20 Miner identification document.

As part of the radiographic examination, a Miner Identification Document (Form CDC/NIOSH (M)2.9) which includes an occupational history questionnaire shall be completed for each miner at the facility where the radiograph is made at the same time the chest radiograph required by this subpart is given.

11. Revise the undesignated center heading and § 37.40 to read as follows:

Specifications for Performing Chest Radiographic Examinations

§ 37.40 General provisions.

(a) The chest radiographic examination shall be given at a convenient time and place.

(b) The chest radiographic examination consists of the chest radiograph, and a complete Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8), and Miner Identification Document (Form CDC/NIOSH (M)2.9).

(c) A radiographic examination shall be made in a facility approved in accordance with § 37.43 or § 37.44 by or under the supervision of a physician who makes chest radiographs in the normal course of practice and who has demonstrated ability to make chest radiographs of a quality to best ascertain the presence of pneumoconiosis.

12. Amend § 37.41 as follows:

a. Revise the section heading.

b. Redesignate paragraphs (a) and (b) as paragraphs (b) and (a) respectively.

c. Redesignate paragraphs (c) through (m) as (d) through (n).

d. Add new paragraph (c).

e. Revise newly designated paragraphs (a), (b), (d) through (h), (i) introductory text, (i)(1) through (i)(3), (i)(7), (j)(2), (k), (m), and (n) to read as follows:

§ 37.41 Chest radiograph specifications—film.

(a) Miners shall be disrobed from the waist up at the time the radiograph is given. The facility shall provide a dressing area and for those miners who wish to use one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(b) Every chest radiograph shall be a single posteroanterior projection at full inspiration on a film being no less than 14 by 17 inches and no greater than 16 by 17 inches. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest radiograph will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then the projection shall include both apices with minimum loss of the costophrenic angle.

(c) Chest radiographs shall be performed by a radiologic technologist.

(d) Radiographs shall be made only with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(e) Except as provided in paragraph (e) of this section, radiographs shall be made with units having generators which comply with the following:

(1) The generators of existing radiographic units acquired by the examining facility prior to July 27, 1973, shall have a minimum rating of 200 mA at 100 kVp;

(2) Generators of units acquired subsequent to that date shall have a minimum rating of 300 mA at 125 kVp.

(f) Radiographs made with battery-powered mobile or portable equipment shall be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or of 200 mA at 110 kVp at 60 Hz.

(g) Capacitor discharge and field emission units may be used if the model of such units is approved by NIOSH for quality, performance, and safety. NIOSH will consider such units for approval when listed by a facility seeking approval under § 37.43 or § 37.44 of this subpart.

(h) Radiographs shall be given only with equipment having a beam-limiting device which does not cause large unexposed boundaries. The beam limiting device shall provide rectangular collimation and shall be of the type described in 21 CFR 1020.31(d), (e), (f), and (g). The use of such a device shall be discernible from an examination of the radiograph.

(i) To ensure high quality chest radiographs:

(1) The maximum exposure time shall not exceed 50 milliseconds except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chests over 28 cm posteroanterior, the exposure may be increased to not more than 100 milliseconds;

(2) The source or focal spot to film distance shall be at least 6 feet;

(3) Medium speed film and medium speed intensifying screens are recommended. However, any film-screen combination, the rated ''speed'' of which is at least 100 and does not exceed 300, which produces radiographs with spatial resolution, contrast, latitude and quantum mottle similar to those of systems designated as ''medium speed'' may be employed;

* * * * *

(7) A suitable grid or other means of reducing scattered radiation shall be used;

* * * * *

(j) * * *

(2) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality radiograph, a suitable filter or purification system shall be used.

(k) Before the miner is advised that the examination is concluded, the radiograph shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard radiograph, another shall be immediately made. All substandard radiographs shall be clearly marked as rejected and promptly sent to NIOSH for disposal.

* * * * *

(m) A test object may be required on each radiograph for an objective evaluation of film quality at the discretion of NIOSH.

(n) Each radiograph made hereunder shall be permanently and legibly marked with the name and address or NIOSH approval number of the facility at which it is made, the social security number of the miner, and the date of the radiograph. No other identifying markings shall be recorded on the radiograph.

§§ 37.42 and 37.43 [Redesignated]

13a. Redesignate §§ 37.42 and 37.43 as §§ 37.43 and 37.45 respectively.

13b. Add new § 37.42 to read as follows:

§ 37.42 Chest radiograph specifications—digital radiography systems.

(a) Miners shall be disrobed from the waist up at the time the radiograph is given. The facility shall provide a private dressing area and for those miners who wish to use one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(b) Every digital chest radiograph taken as required under this regulation shall be a single posteroanterior projection at full inspiration on a digital detector being no less than 35 by 43 cm (14 by 17 if measured in inches) and no greater than 41 by 43 cm (16 by 17 inches). The imaging plate shall have a maximum pixel pitch of 200μm, and a minimum matrix size of 5 megapixels (for 35 by 43 cm), with a minimum bit depth of 10. Spatial resolution shall be at least 2.5 line pairs per millimeter. The storage phosphor cassette or digital image detector shall be positioned either vertically or horizontally so that the image includes the apices and costophrenic angles of both right and left lungs. If the detector cannot include the apices and costophrenic angles of both lungs as described, then two side by side images can be obtained which together include the apices and the costophrenic angles of both right and left lungs.

(c) Chest radiographs shall be given by a radiologic technologist.

(d) Radiographs shall be made with a diagnostic X-ray machine with a maximum of a 2 mm source (focal spot).

(e) Radiographs shall be made with units having generators which have a minimum rating of 300 mA at 125 kVp. Exposure kilovoltage shall be at least the minimum as recommended by the manufacturer for chest radiography.

(f) An electric power supply shall be used which complies with the voltage, current, and regulation specified by the manufacturer of the machine. If the manufacturer or installer of the radiographic equipment recommends equipment for control of electrical power fluctuations, such equipment shall be used as recommended.

(g) Radiographs shall be obtained only with equipment having a beam-limiting device that does not cause large unexposed boundaries. The beam limiting device shall provide rectangular collimation. Electronic post-image acquisition ''shutters'' available on some CR and DR systems that limit the size of the final image and that simulate collimator limits shall not be used. The use and effect of the beam limiting device shall be discernible on the resulting image.

(h) Radiographic technique charts shall be used that are developed specifically for the X-ray system and detector combinations used, indicating exposure parameters by anatomic measurements.

(1) If automated exposure control devices are used, performance shall be documented by a medical physicist utilizing the image capture systems and exposure parameters used at the facility for chest imaging, using methods recommended by the American Association of Physicists in Medicine in AAPM Report No. 74, Quality Control in Diagnostic Radiology, Report of Task Group #12, Diagnostic X-Ray Imaging Committee, published by Medical Physics Publishing for AAPM, July 2002, pages 17–18, and in AAPM Report No. 14, Performance Specifications and Acceptance Testing for X-Ray Generators and Automatic Exposure Control Devices, Report of the Diagnostic X-Ray Imaging Committee Task Group on Performance Specifications and Acceptance Testing for X-Ray Generators and Automatic Exposure Control Devices, published by the American Institute of Physics for AAPM, January 1985, pages 61–62. These reports are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of AAPM Report No. 74 from the AAPM Web site at *http://www.aapm.org/pubs/reports/rpt_74.pdf* or from Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705. You may obtain a copy of AAPM Report No. 14 from *http://www.aapm.org/pubs/reports/rpt_14.pdf* or from AAPM, 335 E. 45 Street, New York, NY 10017. You may inspect a copy of AAPM Report No. 74 or AAPM Report No. 14 at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(2) Exposure parameters achieved during the evaluation of the automated exposure system shall be recorded by the medical physicist in a written report or electronic file that is stored at the facility and available for inspection by NIOSH for a minimum of 5 years after the miner's examination.

(i) To ensure high quality digital chest radiographs:

(1) The maximum exposure time shall not exceed 50 milliseconds except for subjects with chests over 28 centimeters posteroanterior, for whom the exposure time shall not exceed 100 milliseconds;

(2) The distance from source or focal spot to detector shall be at least 70 inches (or 180 centimeters if measured in centimeters);

(3) The exposure setting for chest images shall be within the range of 100–300 equivalent exposure speeds and shall comply with the American College of Radiology (ACR) Practice Guideline For Diagnostic Reference Levels in Medical X-Ray Imaging, Section V—Diagnostic Reference Levels For Imaging With Ionizing Radiation and Section VII—Radiation Safety in Imaging, Revised 2008 (Res. 3). The ACR Practice Guideline is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the ACR Practice Guideline from the ACR Web site at *http://www.acr.org/SecondaryMainMenuCategories/quality_safety/guidelines/med_phys/reference_levels.aspx*. You may inspect a copy of the ACR Practice Guideline at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Radiation exposures should be periodically measured and patient radiation doses estimated by the medical physicist to assure doses are as low as reasonably achievable.

(4) Digital radiography system performance, including image signal-to-noise and detective quantum efficiency shall be evaluated and judged acceptable by a qualified medical physicist using the specifications of the American Association of Physicists in Medicine, AAPM Report No. 93, Acceptance Testing and Quality Control of Photostimulable Storage Phosphor Imaging Systems, Report of AAPM Task Group 10, published by AAPM, October 2006, pages 1–68. This report is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of AAPM Report No. 93 from the AAPM Web site at *http://www.aapm.org/pubs/reports/RPT_93.pdf* or from AAPM, One Physics Ellipse, College Park, MD 20740. You may inspect a copy of AAPM Report No. 93 at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Image management software and settings for routine chest imaging shall be used, including routine amplification of digital detector signal as well as standard image post-processing functions. No image or edge enhancement software functions shall be employed unless they are integral to the digital radiography system (not elective); in such cases, only the minimum image enhancement permitted by the system shall be employed.

(5) (i) The image object, transmission and associated data storage, file format, and transmission of associated information shall conform to the following components of the National Electrical Manufacturers Association's Digital Imaging and Communications in Medicine (DICOM) standard:

(A) Part 3 (PS 3.3–2011): Information Object Definitions, Annex A—Composite Information Object Definitions, sections: Digital X-Ray Image Information Object Definition; X-Ray Radiation Dose SR Information Object Definition; and Grayscale Softcopy Presentation State Information Object Definition.

(B) Part 4 (PS3.4–2011): Service Class Specifications, sections: Annex B—Storage Service Class; Annex N—Softcopy Presentation State Storage SOP Classes; Annex O—Structured Reporting Storage SOP Classes.

(C) Part 10 (PS 3.10–2011): Media Storage and File Format for Data Interchange.

(D) Part 11 (PS 3.11–2011): Media Storage Application Profiles.

(E) Part 12 (PS 3.12–2011): Media Formats and Physical Media for Media Interchange.

(F) Part 14 (PS 3.14–2011): Grayscale Standard Display Function.

(G) Part 16 (PS 3.16–2011): Content Mapping Resource, section: X-Ray Radiation Dose SR IOD Templates.

(ii) The sections of the DICOM standard indicated above are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the DICOM standard from the NEMA Web site at *ftp://medical.nema.org/medical/dicom/2011/* or from the National Electrical Manufacturers Association, 1300 N. 17th Street, Rosslyn, VA 22209. You may inspect a copy of the DICOM standard at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(A) Identification of each miner, chest image, facility, date and time of the examination shall be encoded within the image information object, according to Part 3 (PS 3.3–2011) of the DICOM standard, Information Object Definitions, for the DICOM ''DX'' object. Part 3 is incorporated by reference and is available as indicated above. If data compression is performed, it shall be lossless. Exposure parameters (kVp, mA, time, beam filtration, scatter reduction, radiation exposure) shall be stored in the DX information object.

(B) Exposure parameters as defined in the DICOM Standard PS 3.16–2011: Content Mapping Resource, shall additionally be provided, when such parameters are available from the facility digital image acquisition system or recorded in a written report or electronic file and either transmitted to NIOSH or stored at the facility and available for inspection by NIOSH for 5 years after the examination.

(6) A specific test object may be required on each radiograph for an objective evaluation of image quality at the discretion of NIOSH.

(7) CR imaging plates shall be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(8) A grid or air gap for reducing scattered radiation shall be used; grids shall not be used that cause Moiré interference patterns in either horizontal or vertical images.

(9) The geometry of the radiographic system shall ensure that the central axis (ray) of the primary beam is perpendicular to the plane of the CR imaging plate, or DR detector and is correctly aligned to the grid;

(10) Radiographs shall not be made when the environmental temperatures and humidity in the facility are outside the manufacturer's recommended range of the CR and DR equipment to be used.

(11) Before the miner is advised that the examination is concluded, the radiograph shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard radiograph, another shall be made immediately. Unacceptable digital image files shall be fully deleted immediately or rendered permanently inaccessible in the event that permanent deletion is not technologically feasible.

(j) The following are not authorized for use under this section:

(1) Digital images derived from film screen chest radiographs (*e.g.,* by scanning or digital photography); or

(2) Images that were acquired using digital systems and then printed on transparencies for back-lighted display (*e.g.,* using tradition view boxes).

14. Revise newly designated § 37.43 to read as follows:

§ 37.43 Approval of radiographic facilities that use film.

(a) Facilities become eligible to participate in this program by demonstrating their ability to make high quality diagnostic chest radiographs by submitting to NIOSH six or more sample chest radiographs made and processed at the applicant facility and which are of acceptable quality to one or more individuals selected by NIOSH from the panel of B Readers. Applicants shall also submit a radiograph of a plastic step-wedge object [1] or other test object (available on loan from NIOSH) which was made and processed at the same time with the same technique as the radiographs submitted and processed at the facility for which approval is sought. At least one chest radiograph and one test object radiograph shall have been made with each unit to be used hereunder. All radiographs shall have been made within 15 calendar days prior to submission and shall be marked to identify the facility where each radiograph was made, the X-ray machine used, and the date each was made. The chest radiographs will be returned and may be the same radiographs submitted pursuant to § 37.50.

(b) Each radiographic facility submitting chest radiographs for approval under this section shall complete and include an X-ray Facility Certification Document (Form CDC/NIOSH (M) 2.11) describing each X-ray unit to be used to make chest radiographs under the Act. The form shall include:

(1) The date of the last radiation safety inspection by an appropriate licensing agency or, if no such agency exists, by a qualified expert as defined in NCRP Report No. 102 (see § 37.45);

(2) The deficiencies found;

(3) A statement that all the deficiencies have been corrected; and

(4) The date of acquisition of the X-ray unit. To be acceptable, the radiation safety inspection shall have been made within 1 year preceding the date of application.

(c) Radiographs submitted with applications for approval under this section will be evaluated by one or more individuals selected by NIOSH from the panel of B Readers or by a qualified medical physicist or consultant. Applicants will be advised of any reasons for denial of approval.

(d) NIOSH or its representatives may make a physical inspection of the applicant's facility and any approved radiographic facility at any reasonable time to determine if the requirements of this subpart are being met.

(e) NIOSH may require a facility periodically to resubmit radiographs of a test object, sample radiographs, or a Facility Certification Document for quality control purposes. Approvals granted hereunder may be suspended or withdrawn by notice in writing when in the opinion of NIOSH the quality of radiographs or information submitted under this section warrants such action. A copy of a notice withdrawing approval will be sent to each operator who has listed the facility as its facility for giving chest radiographs and shall be displayed on the mine bulletin board adjacent to the operator's approved

[1] The plastic step-wedge object is described in Trout ED, Kelley JP [1973]. A phantom for the evaluation of techniques and equipment used for roentgenography of the chest. Amer J Roentgenol 117(4):771–776.

plan. The approved plan will be reevaluated by NIOSH in light of this change.

(f) A formal written quality assurance program shall be established at each facility addressing radiation exposures, equipment maintenance, and image quality, and shall conform to the standards set by the American Association of Physicists in Medicine in AAPM Report No. 74, Quality Control in Diagnostic Radiology, Report of Task Group #12, Diagnostic X-Ray Imaging Committee, published by Medical Physics Publishing for AAPM, July 2002, pages 1–19, 47–53, and 56. This report is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of AAPM Report No. 74 from the AAPM Web site at *http://www.aapm.org/pubs/reports/rpt_74.pdf* or from Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705. You may inspect a copy of AAPM Report No. 74 at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(g) In conducting medical examinations pursuant to this Part, physicians and radiographic facilities shall maintain the results and analysis of these examinations (including any hard copies or digital files containing individual data, interpretations, and images) consistent with applicable statutes and regulations governing the treatment of individually identifiable health information, including, as applicable, the HIPAA Privacy and Security Rules (45 CFR part 160 and subparts A, C, and E of part 164).

15. Add § 37.44 to read as follows:

§ 37.44 Approval of radiographic facilities that use digital radiography systems.

(a) *Applications for facility approval.*

(1) Facilities seeking approval shall demonstrate the ability to make high quality digital chest radiographs by submitting to NIOSH digital radiographic image files of a test object (*e.g.,* a plastic step-wedge or chest phantom which will be provided on loan from NIOSH) as well as digital radiographic image files from six or more sample chest radiographs which are of acceptable quality to (1) one or more individuals selected by NIOSH from the panel of B Readers and (2) a qualified medical physicist or consultant, both designated by NIOSH. Image files shall be submitted on standard portable media (compact or digital video disc) and formatted to meet specifications of the Digital Imaging and Communications in Medicine (DICOM) standard for diagnostic media interchange Part 12 (PS 3.12–2011): Media Formats and Physical Media for Media Interchange. Applicants will be advised of any reasons for denial of approval. All submitted images shall be made within 60 days prior to the date of application using the same technique, equipment, and software as will be used by the facility under the requested approval. At least six chest radiographs and one test object radiograph shall have been made with each digital radiographic unit to be used by the facility under the requested approval. The corresponding radiographic image files shall be submitted on standard portable media (compact or digital video disc) and formatted to meet specifications of the current Digital Imaging and Communications in Medicine (DICOM) standard for diagnostic media interchange Part 12 (PS 3.12–2011): Media Formats and Physical Media for Media Interchange. DICOM Part 12 is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the DICOM standard from the NEMA Web site at *ftp://medical.nema.org/medical/dicom/2011/* or from the National Electrical Manufacturers Association, 1300 N. 17th Street, Rosslyn, VA 22209. You may inspect a copy of the DICOM standard at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of this document at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Documentation shall include the following: the identity of the facility where each radiograph was made; the X-ray machine used; and the model, version, and production date of each image acquisition software program and hardware component. The submitted sample digital chest image files shall include at least two taken with the detector in the vertical position and two in the horizontal position where the imaging system permits these positions, and at least two chest images shall be from persons within the highest quartile of chest diameters (28 cm or greater).

(2) Each radiographic facility submitting chest radiographic image files for approval under this section shall complete and include an X-ray Facility Certification Document (Form CDC/NIOSH (M)2.11) describing each X-ray system component, and the models and versions of image acquisition hardware and software to be used to make digital chest radiographs under the Act. The form shall include:

(i) A copy of a dated report signed by a qualified medical physicist, documenting the evaluation of radiation safety and performance characteristics specified in this regulation for each digital radiography system;

(ii) A copy of the report of the most recent radiation safety inspection by a licensing agency, if such agency exists;

(iii) A listing of all deficiencies noted in either of the reports;

(iv) A statement that all the listed deficiencies have been corrected; and

(v) The names and relevant training and experience of facility personnel described in paragraphs (b), (d), and (e) of this section. To be acceptable, the report by the medical physicist and radiation safety inspection specified in this paragraph shall have been made within 1 year prior to the date of submission of the application.

(b) Facilities shall maintain ongoing licensure and certification under relevant local, State, and Federal laws and regulations for all digital equipment and related processes covered under this Part.

(c) NIOSH or its representatives may make a physical inspection of the applicant's facility and any approved radiographic facility at any reasonable time to determine if the requirements of this subpart are being met.

(d) NIOSH may periodically require a facility to resubmit radiographic image files of the NIOSH-supplied test object (*e.g.,* step-wedge or chest phantom), sample radiographs, or a Facility Certification Document. Approvals granted to facilities under this section may be suspended or withdrawn by notice in writing when, in the opinion of NIOSH, deficiencies in the quality of radiographs or information submitted under this section warrant such action. A copy of a notice suspending or withdrawing approval will be sent to each operator that has listed the facility for its use under this Part and shall be displayed on the mine bulletin board adjacent to the operator's approved plan. The operator's approved plan may be reevaluated by NIOSH in response to such suspension or withdrawal.

(e) A qualified medical physicist who is familiar with the facility hardware and software systems for image acquisition, manipulation, display, and storage, shall be on site or available as a consultant. The physicist shall be trained in evaluating the performance of radiographic equipment and facility quality assurance programs, and shall be licensed/approved by a State or territory of the United States or certified by a competent U.S. national board.

(f) Facilities shall document that testing performed by a qualified medical physicist has verified that performance of each image acquisition system for which approval is sought met initial specifications and standards of the equipment manufacturer and performance testing as required under paragraphs (b), (e), and (g) of this section.

(g) A formal written quality assurance program shall be established at each facility addressing radiation exposures, equipment maintenance, and image quality, and shall conform to the standards set by the American Association of Physicists in Medicine in AAPM Report No. 74, Quality Control in Diagnostic Radiology, Report of Task Group #12, Diagnostic X–Ray Imaging Committee, published by Medical Physics Publishing for AAPM, July 2002, pages 1–19, 47–53, and 56, and AAPM Report No. 116, An Exposure Indicator for Digital Radiography, Report of AAPM Task Group 116, published by AAPM, July 2009, sections VIII, IX, and X. These reports are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of AAPM Report No. 74 from the AAPM Web site at *http://www.aapm.org/pubs/reports/rpt_74.pdf* or from Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705. You may obtain a copy of AAPM Report No. 116 from the AAPM Web site at *http://www.aapm.org/pubs/reports/RPT_116.PDF* or from American Association of Physicists in Medicine, One Physics Ellipse, College Park, MD 20740. You may inspect a copy of AAPM Report No. 74 and No. 116 at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) Applications for facility approval shall include a comprehensive assessment by a qualified medical physicist within 12 months prior to application addressing the performance of X-ray generators, automatic exposure controls, and image capture systems. The assessment shall comply with the following guidelines: American Association of Physicists in Medicine, AAPM Report No. 93, Acceptance Testing and Quality Control of Photostimulable Storage Phosphor Imaging Systems, Report of AAPM Task Group 10, published by AAPM, October 2006, pages 1–68; AAPM Report No. 74, Quality Control in Diagnostic Radiology, Report of Task Group #12, Diagnostic X-Ray Imaging Committee, published by Medical Physics Publishing for AAPM, July 2002, page 6–11; and AAPM Report No. 14, Performance Specifications and Acceptance Testing for X-Ray Generators and Automatic Exposure Control Devices, Report of the Diagnostic X-Ray Imaging Committee Task Group on Performance Specifications and Acceptance Testing for X-Ray Generators and Automatic Exposure Control Devices, published by the American Institute of Physics, January 1985, pages 1–96. These reports are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of AAPM Report No. 93 from the AAPM Web site at *http://www.aapm.org/pubs/reports/RPT_93.pdf* or from the American Association of Physicists in Medicine, One Physics Ellipse, College Park, MD 20740. You may obtain a copy of AAPM Report No. 74 from the AAPM Web site at *http://www.aapm.org/pubs/reports/rpt_74.pdf* or from Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705. You may obtain a copy of AAPM Report No.14 from the AAPRM Web site at *http://www.aapm.org/pubs/reports/rpt_14.pdf* or from the Executive Secretary, American Association of Physicists in Medicine, 335 E. 45 Street, New York, NY 10017. A copy of AAPM Reports No. 93, 74, and 14 may be inspected at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) Radiographic technique charts shall be used that are developed specifically for the X-ray system and detector combinations used, indicating exposure parameters by anatomic measurements. If automated exposure control devices are used, calibration for chest imaging shall be documented using the actual voltages and image capture systems. Radiological exposures resulting from at least ten (randomly selected) digital chest images obtained at the facility shall be monitored at least quarterly to detect and correct potential dose creep, using methods specified in: American Association of Physicists in Medicine in AAPM Report No. 31, Standardized Methods for Measuring Diagnostic X-Ray Exposures, Report of Task Group 8, Diagnostic X-Ray Imaging Committee, published by the American Institute of Physics, March 2005. This report is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of AAPM Report No. 31 from the AAPM Web site at *http://www.aapm.org/pubs/reports/RPT_31.pdf* or from the American Institute of Physics, c/o AIDC, 64 Depot Road, Colchester, VT 05446. A copy of AAPM Report No. 31 may be inspected at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Radiation exposures shall be compared to a professionally accepted reference level published in the American College of Radiology (ACR) Practice Guideline For Diagnostic Reference Levels in Medical X-Ray Imaging, Revised 2008 (Res. 3), pages 1–6. The ACR Practice Guideline is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the ACR Practice Guideline from the ACR Web site at *http://www.acr.org/SecondaryMainMenuCategories/quality_safety/guidelines/med_phys/reference_levels.aspx.* You may inspect a copy of the ACR Practice Guideline at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of this

material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* In addition, the medical physicist shall submit an annual assessment of measured or estimated radiation exposures, with specific recommended actions to minimize exposures during examinations performed under this Part.

(3) For each digital radiography device and system, performance shall be monitored annually in accordance with the recommendations of AAPM Report No. 93, except for the testing specifically excluded below. Documentation shall be maintained on the completion of quality assurance testing, including the reproducibility of X-ray output, linearity and reproducibility of mA settings, accuracy and reproducibility of timer and kVp settings, accuracy of source-to-detector distance, and X-ray field focal spot size, selection, beam quality, congruence and collimation. For DR systems, the following tests listed in AAPM Report No. 93, Acceptance Testing and Quality Control of Photostimulable Storage Phosphor Imaging Systems, 2006, are not required under this Part:

(i) Section 8.4.5: Laser beam function
(ii) Section 8.4.9: Erasure Thoroughness
(iii) Section 8.4.11: Imaging Plate (IP) Throughput

(4) Facilities shall maintain documentation, available for inspection by NIOSH for 5 years, of the ongoing implementation of policies and procedures for monitoring and evaluating the effective management, safety, and proper performance of chest image acquisition, digitization, processing, compression, transmission, display, archiving, and retrieval functions of digital radiography devices and systems.

(h) In conducting medical examinations pursuant to this Part, physicians and radiographic facilities shall maintain the results and analysis of these examinations (including any hard copies or digital files containing individual data, interpretations, and images) consistent with applicable statutes and regulations governing the treatment of individually identifiable health information, including, as applicable, the HIPAA Privacy and Security Rules (45 CFR Part 160 and Subparts A, C, and E of Part 164).

16. Revise newly designated § 37.45 to read as follows:

§ 37.45 Protection against radiation emitted by radiographic equipment.

Except as otherwise specified in § 37.41 and § 37.42, radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used, shall conform to applicable State or territorial and Federal regulations. Where no applicable regulations exist, radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used shall conform to the recommendations of the National Council on Radiation Protection and Measurements in NCRP Report No. 102, Medical X-ray, Electron Beam, and Gamma-Ray Protection for Energies Up to 50 MeV, Equipment Design, Performance, and Use, 1989; NCRP Report No. 105, Medical Radiation Protection for Medical and Allied Health Personnel, 1989; and in NCRP Report No. 49, Structural Shielding Design and Evaluation for Medical Use of X–Rays and Gamma Rays of Energies up to 10 MeV, 1976. These documents are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the NCRP reports from NCRP Publications, 7910 Woodmont Avenue, Suite 400, Bethesda, MD 20814–3095, Telephone (800) 229–2652 or from *http://www.ncrponline.org/Publications/Publications.html.* You may inspect a copy of the ACR Practice Guideline at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

17. Revise the undesignated center heading and § 37.50 to read as follows:

Specifications for Interpretation, Classification, and Submission of Chest Radiographs

§ 37.50 Interpreting and classifying chest radiographs—film.

(a) Chest radiographs shall be interpreted and classified in accordance with the International Labour Office (ILO) International Classification of Radiographs for Pneumoconioses, 2011. The ILO Classification is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may purchase a copy of the ILO Classification from ILO Publications, International Labour Office, CH–1211 Geneva 22, Switzerland, or from the ILO Web site at *http://www.ilo.org/publns.* You may inspect the ILO Classification at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Chest radiograph interpretations and classifications shall be recorded on a paper or electronic Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8).

(b) Radiographs shall be interpreted and classified only by a physician who reads chest radiographs in the normal course of practice and who has demonstrated proficiency in classifying the pneumoconioses in accordance with § 37.52.

(1) Initial clinical interpretations and notification of findings other than pneumoconiosis under § 37.50(a) shall be provided by a qualified physician who has all required licensure and privileges, and interprets chest radiographs in the normal course of practice.

(c) All interpreters, whenever interpreting chest radiographs made under the Act, shall have immediately available for reference a complete set of the ILO International Classification of Radiographs for Pneumoconioses, 2011.

(d) In all view boxes used for making interpretations:

(1) Fluorescent lamps shall be simultaneously replaced with new lamps at 6-month intervals;

(2) All the fluorescent lamps in a panel of boxes shall have identical manufacturer's ratings as to intensity and color;

(3) The glass, internal reflective surfaces, and the lamps shall be kept clean;

(4) The unit shall be so situated as to minimize front surface glare.

§§ 37.51–37.53 [Redesignated]

18a. Redesignate §§ 37.51 through 37.53 as §§ 37.52 through 37.54 respectively.

18b. Add new § 37.51 to read as follows:

§ 37.51 Interpreting and classifying chest radiographs—digital radiography systems.

(a) For each chest radiograph obtained at an approved facility using a digital radiography system, a qualified and licensed physician who reads chest radiographs in the normal course of practice shall provide an initial clinical interpretation and notification, as

specified in § 37.54, of any significant abnormal findings other than pneumoconiosis.

(b) Chest radiographs shall be classified for pneumoconiosis by physician readers who have demonstrated ongoing proficiency, as specified in § 37.52(b), in classifying the pneumoconioses in a manner consistent with the ILO International Classification of Radiographs of Pneumoconioses 2011. The ILO Classification is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may purchase a copy of the ILO Classification from ILO Publications, International Labour Office, CH–1211 Geneva 22, Switzerland, or from the ILO Web site at *http://www.ilo.org/publns.* You may inspect the ILO Classification at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Chest radiograph interpretations and classifications shall be recorded on a paper or electronic Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8).

(c) All interpreters, whenever classifying digitally-acquired chest radiographs made under the Act, shall have immediately available for reference a complete set of NIOSH-approved standard digital chest radiographic images provided for use with the ILO International Classification of Radiographs of Pneumoconioses, 2011. Only NIOSH-approved standard digital images shall be used for classifying digital chest images for pneumoconiosis. Modification of the appearance of the standard images using software tools is not permitted.

(d) Viewing systems should enable readers to display the coal miner's chest image at the full resolution of the image acquisition system, side-by-side with the selected NIOSH-approved standard images for comparison.

(1) Image display devices shall be flat panel monitors displaying at least 3 MP at 10 bit depth. Image displays and associated graphics cards shall meet the calibration and other specifications of the National Electrical Manufacturers Association's Digital Imaging and Communications in Medicine (DICOM) standard Part 14 (PS 3.14–2011): Grayscale Standard Display Function. DICOM Part 14 is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the DICOM standard from the NEMA Web site at *ftp://medical.nema.org/medical/dicom/2011/or* from the National Electrical Manufacturers Association, 1300 N. 17th Street, Rosslyn, VA 22209. You may inspect a copy of the DICOM standard at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of this document at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Image displays and associated graphics cards shall not deviate by more than 10 percent from the grayscale standard display function (GSDF) when assessed according the American Association of Physicists in Medicine (AAPM) On-Line Report No. 03, Assessment of Display Performance for Medical Imaging Systems, Task Group 18, Imaging Informatics Subcommittee, published by AAPM, April 2005, pages 1–146. This report is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of On-Line Report No. 03 from American Association of Physicists in Medicine, One Physics Ellipse, College Park, MD 20740 or from *http://www.aapm.org/pubs/reports/OR_03.pdf.* You may inspect a copy of AAPM On-Line Report No. 03 at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of this document at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) Display system luminance (maximum and ratio), relative noise, linearity, modulation transfer function (MTF), frequency, and glare should meet or exceed recommendations listed in AAPM On-Line Report No. 03, Assessment of Display Performance for Medical Imaging Systems, Task Group 18, Imaging Informatics Subcommittee, published by AAPM, April 2005, pages 1–146. This report is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of On-Line Report No. 03 from American Association of Physicists in Medicine, One Physics Ellipse, College Park, MD 20740 or from *http://www.aapm.org/pubs/reports/OR_03.pdf.* You may inspect a copy of AAPM On-Line Report No. 03 at the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of this document at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Viewing displays shall have a maximum luminance of at least 171 cd/m^2, a ratio of maximum luminance to minimum luminance of at least 250, and a glare ratio greater than 400. The contribution of ambient light reflected from the display surface, after light sources have been minimized, shall be included in luminance measurements.

(3) Displays shall be situated so as to minimize front surface glare. Readers shall minimize reflected light from ambient sources during the performance of classifications.

(4) Measurements of the width and length of pleural shadows and the diameter of opacities shall be taken using calibrated software measuring tools. If permitted by the viewing software, a record shall be made of the presentation state(s), including any noise reduction and edge enhancement or restoration functions that were used in performing the classification, including any annotations and measurements.

(e) Quality control procedures for devices used to display chest images for classification shall comply with the recommendations of the American Association of Physicists in Medicine AAPM On-Line Report No. 03, Assessment of Display Performance for Medical Imaging Systems, Task Group 18, Imaging Informatics Subcommittee, published by AAPM, April 2005, pages 1–146. This report is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of On-Line Report No. 03 from American Association of Physicists in Medicine, One Physics Ellipse, College Park, MD 20740 or from *http://www.aapm.org/pubs/reports/OR_03.pdf.* You may inspect a copy of AAPM On-Line Report No. 03 at the

NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226, or at the National Archives and Records Administration (NARA). For information on the availability of this document at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) If automatic quality assurance systems are used, visual inspection shall be performed using one or more test patterns recommended by the medical physicist every 6 months, or more frequently, to check for defects that automatic systems may not detect.

(2) [Reserved]

(f) Classification of CR and DR digitally-acquired chest radiographs under this Part shall be performed based on the viewing of images displayed as soft copies using the viewing workstations specified in this section. Classification of radiographs shall not be based on the viewing of hard copy printed transparencies of images that were digitally-acquired.

(g) The classification chest radiographs based on digitized copies of chest radiographs that were originally acquired using film-screen techniques is not permissible under this Part.

19. Revise newly designated § 37.52 to read as follows:

§ 37.52 Proficiency in the use of systems for classifying the pneumoconioses.

(a) First or A Readers:

(1) Approval as an A Reader shall continue if established prior to the effective date of these regulations.

(2) Physicians who desire to be A Readers must demonstrate their proficiency in classifying the pneumoconioses by either:

(i) Submitting to NIOSH from the physician's files six sample chest radiographs which are considered properly classified by one or more individuals selected by NIOSH from the panel of B Readers. The six radiographs shall consist of two without pneumoconiosis, two with simple pneumoconiosis, and two with complicated pneumoconiosis (these may be the same radiographs submitted for facility approval pursuant to § 37.43 and § 37.44). The films will be returned to the physician. The interpretations shall be on the Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8), or;

(ii) Satisfactory completion, since June 11, 1970, of a course approved by NIOSH on the ILO International Classification of Radiographs of Pneumoconioses.

(b) Final or B Readers:

(1) Approval as a B Reader established prior to October 1, 1976, shall hereby be terminated.

(2) Proficiency in evaluating chest radiographs for radiographic quality and in the use of the ILO Classification for interpreting chest radiographs for pneumoconiosis and other diseases shall be demonstrated by those physicians who desire to be B Readers by taking and passing a specially-designed proficiency examination given on behalf of or by NIOSH at a time and place specified by NIOSH. Each physician who desires to take the digital version of the examination will be provided a complete set of the current NIOSH-approved standard reference digital radiographs. Physicians who qualify under this provision need not be qualified under paragraph (a) of this section.

(c) Physicians who wish to participate in the program shall familiarize themselves with the necessary components for attainment of reliable classification of chest radiographs for the pneumoconioses [2] and apply using an Interpreting Physician Certification Document (Form CDC/NIOSH (M)2.12).

20. Revise newly designated § 37.53 to read as follows:

§ 37.53 Method of obtaining definitive interpretations.

(a) All chest radiographs which are first interpreted by an A or B Reader will be submitted by NIOSH to a B Reader qualified as described in § 37.52. If there is agreement between the two interpretations, as described in paragraph (b) of this section, the result shall be considered final and reported to MSHA for transmittal to the miner. When agreement is lacking, NIOSH shall obtain a third interpretation from the panel of B Readers. If any two of the three interpretations demonstrate agreement, the result shall be considered the final determination. If agreement is lacking among the three interpretations, NIOSH will obtain independent classifications from two additional B Readers selected from the panel, and the final determination will be the median category derived from the total of five classifications.

(b) Two interpretations shall be considered to be in agreement when they are derived from complete classifications recorded using approved paper or electronic versions of the Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8) and received by NIOSH, and both find either stage A, B, or C complicated pneumoconiosis, or, for simple pneumoconiosis, are both in the same major category or (with one exception noted below) are within one minor category (ILO Classification 12-point scale) of each other. In the last situation, the higher of the two interpretations shall be reported. The only exception to the one minor category principle is a reading sequence of 0/1, 1/0, or 1/0, 0/1, which is not considered agreement.

21. Revise newly designated § 37.54 to read as follows:

§ 37.54 Notification of abnormal radiographic findings.

(a) Findings of, or findings suggesting, enlarged heart, tuberculosis, lung cancer, or any other significant abnormal findings other than pneumoconiosis shall be communicated by the first physician to interpret the radiograph to the miner or to the designated physician of the miner indicated on the Miner Identification Document. A notice of the communication shall be submitted to NIOSH. NIOSH will also notify the miner to contact his or her physician when any physician who interprets and classifies the miner's radiograph reports significant abnormal findings other than pneumoconiosis.

(b) In addition, when NIOSH has more than one radiograph of a miner in its files and the most recent examination was interpreted to show enlarged heart, tuberculosis, cancer, complicated pneumoconiosis, and any other significant abnormal findings, NIOSH will submit all of the miner's radiographs in its files with their respective interpretations to a B Reader. The B Reader will report any significant changes or progression of disease or other comments to NIOSH and NIOSH shall submit a copy of the report to the miner or to the miner's designated physician.

(c) All final findings regarding pneumoconiosis will be sent to the miner by MSHA in accordance with section 203 of the Act (see 30 CFR part 90). Positive findings with regard to pneumoconiosis will be reported to the miner or to the miner's designated physician by NIOSH.

(d) NIOSH will make every reasonable effort to process the findings described in paragraph (c) of this section within 60 days of receipt of the information described in § 37.60 in a complete and acceptable form. The information forwarded to MSHA will be in a form intended to facilitate prompt dispatch of the findings to the miner. The results of

[2] NIOSH Safety and Health Topic. Chest Radiography: Radiographic Classification *[http://www.cdc.gov/niosh/topics/chestradiography/radiographic-classification.html]*. Date accessed: January 25, 2011.

an examination made of a miner may not be processed by NIOSH if the examination was made within 6 months of the date of a previous acceptable examination.

22. Amend § 37.60 by revising paragraphs (a) through (d) to read as follows:

§ 37.60 Submitting required chest radiographs and miner identification documents.

(a) Each chest radiograph required to be made under this subpart, together with the completed Roentgenographic Interpretation Form and the completed Miner Identification Document, shall be submitted together for each miner to NIOSH within 14 calendar days after the radiographic examination is given and become the property of NIOSH.

(1) When the radiograph is digital, the image file for each radiograph, together with either hard copy or electronic versions of the completed Roentgenographic Interpretation Form and the completed Miner Identification Document, shall be submitted to NIOSH using the software and format specified by NIOSH either using portable electronic media, or a secure electronic file transfer within 14 calendar days after the radiographic examination. NIOSH will notify the submitting facility when it has received the image files and forms from the examination. After this notification, the facility will permanently delete, or if this is not technologically feasible for the imaging system used, render permanently inaccessible all files and forms from its electronic and physical files.

(2) [Reserved]

(b) If NIOSH deems any submission under paragraph (a) of this section inadequate, it will notify the operator of the deficiency. The operator shall promptly make appropriate arrangements for the necessary reexamination.

(c) Failure to comply with paragraph (a) or (b) of this section shall be cause to revoke approval of a plan or any other approval as may be appropriate. An approval which has been revoked may be reinstated at the discretion of NIOSH after it receives satisfactory assurances and evidence that all deficiencies have been corrected and that effective controls have been instituted to prevent a recurrence.

(d) Chest radiographs and other required documents shall be submitted only for miners.

* * * * *

23. Revise § 37.70 to read as follows:

§ 37.70 Review of interpretations.

(a) Any miner who believes the interpretation for pneumoconiosis reported to him or her by MSHA is in error may file a written request with NIOSH that his or her radiograph be reevaluated. If the interpretation was based on agreement between an A Reader and a B Reader, NIOSH will obtain one or more additional interpretations by B Readers as necessary to obtain agreement in accord with § 37.53, and MSHA shall report the results to the miner together with notification from MSHA of any rights which may accrue to the miner in accordance with § 37.7. If the reported interpretation was based on agreement between two (or more) B Readers, the reading will be accepted as conclusive and the miner shall be so informed by MSHA.

(b) Any operator who is directed by MSHA to transfer a miner to a less dusty atmosphere based on the most recent examination made subsequent to August 1, 1978, may file a written request with NIOSH to review its findings. The standards set forth in paragraph (a) of this section apply and the operator and miner will be notified by MSHA whether the miner is entitled to the option to transfer.

24. Revise § 37.80 to read as follows:

§ 37.80 Availability of records for radiographs.

(a) Medical information and radiographs on miners will be released by NIOSH only with the written consent from the miner, or if the miner is deceased, written consent from the miner's widow or widower, next of kin, or legal representative.

(b) To the extent authorized, radiographs will be made available for examination only at NIOSH.

25. Amend § 37.201 by revising paragraph (d) to read as follows:

§ 37.201 Definitions.

* * * * *

(d) *NIOSH* means the National Institute for Occupational Safety and Health, United States Public Health Service, Department of Health and Human Services, Post Office Box 4258, Morgantown, WV 26504.

26. Amend § 37.202 by revising paragraphs (a)(2) and (b) to read as follows:

§ 37.202 Payment for autopsy.

(a) * * *

(2) Submits the findings and other materials to NIOSH in accordance with this subpart within 180 calendar days after having performed the autopsy; and

* * * * *

(b) The Secretary will pay to any pathologist entitled to payment under paragraph (a) of this section and additional $10 if the pathologist can obtain and submits a good quality copy or original of a chest radiograph (posteroanterior view) made of the subject of the autopsy within 5 years prior to his death together with a copy of any interpretation made.

26. Amend § 37.204 by revising the introductory text and paragraph (b), and removing Figure 1, to read as follows:

§ 37.204 Procedure for obtaining payment.

Every claim for payment under this subpart shall be submitted to NIOSH and shall include:

* * * * *

(b) Completed PHS Consent, Release and History form (Form CDC/NIOSH (M)2.6). This form may be completed with the assistance of the pathologist, attending physician, family physician, or any other responsible person who can provide reliable information.

* * * * *

Dated: October 11, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–33164 Filed 1–6–12; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–212 3
213–418 4
419–728 5
729–1008 6
1009–1386 9

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8768 209
8769 211
8770 407
8771 413
8772 1007

8 CFR

Proposed Rules:
212 1040

10 CFR

Proposed Rules:
50 441
52 441
100 441

12 CFR

Proposed Rules:
44 23
248 23
252 594
351 23

14 CFR

39 ..... 1, 3, 729, 731, 1009
71 ..... 5, 6, 1012
97 ..... 1013, 1015
117 330
119 330
121 330
Proposed Rules:
39 1043
71 ..... 770, 771

15 CFR

740 1017
742 1017
774 1017
Proposed Rules:
801 772
806 772
807 772

16 CFR

Proposed Rules:
303 234
305 234

17 CFR

43 1182
Proposed Rules:
230 24
255 23

21 CFR

530 735
606 7
610 7
640 7
Proposed Rules:
10 25

29 CFR

1915 18

30 CFR

585 1019

31 CFR

351 213
359 213
363 213
Proposed Rules:
150 35

32 CFR

222 745

33 CFR

117 ..... 419, 420, 421, 423
165 ..... 1020, 1023, 1025

37 CFR

Proposed Rules:
1 ..... 442, 448, 982
3 982
11 457

40 CFR

52 ..... 745, 1027
80 ..... 462, 1320
180 745
Proposed Rules:
9 960
51 1130
60 1130
61 1130
63 ..... 960, 1130, 1268
65 960
80 700

42 CFR

63 556
410 ..... 217, 227
411 217
414 227
415 227
416 217
419 217
489 217
495 ..... 217, 227
Proposed Rules:
37 1360

44 CFR

65 ..... 423, 425

45 CFR

1355 896
1356 896
Proposed Rules:
1355 467

46 CFR

1 232
10 232
11 232
12 232
13 232
14 232
15 232

47 CFR

64 1039

Proposed Rules:

76 468

48 CFR

Ch. 1 ....182, 205
1 197
2 ....183, 187
4 ....183, 187, 204
5 189
6 189
7 ....183, 187
8 ....183, 189, 194, 204
9 ....183, 187, 197
11 189
12 ....194, 197
13 ....187, 189
15 204
16 ....189, 194
17 183
18 ....183, 187, 189
19 204
22 204
23 204
25 187
26 187
28 204
31 202
35 183
36 189
41 183
42 ....197, 204
52 ....187, 197, 202, 204
501 749
539 749
552 749
1552 427

49 CFR

173 429
571 751

Proposed Rules:

238 154
239 154

50 CFR

17 431
679 438

Proposed Rules:

17 ....45, 666
218 842
622 1045
648 52
665 66

LIST OF PUBLIC LAWS

This is the final list of public bills from the first session of the 112th Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 1540/P.L. 112–81

National Defense Authorization Act for Fiscal Year 2012 (Dec. 31, 2011; 125 Stat. 1298)

H.R. 515/P.L. 112–82

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

H.R. 789/P.L. 112–83

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the "Sergeant Matthew J. Fenton Post Office". (Jan. 3, 2012; 125 Stat. 1869)

H.R. 1059/P.L. 112–84

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

H.R. 1264/P.L. 112–85

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the "M.D. Anderson Plaza" and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

H.R. 1801/P.L. 112–86

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

H.R. 1892/P.L. 112–87

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

H.R. 2056/P.L. 112–88

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

H.R. 2422/P.L. 112–89

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the "Sergeant Angel Mendez Post Office". (Jan. 3, 2012; 125 Stat. 1903)

H.R. 2845/P.L. 112–90

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

Last List December 30, 2011

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