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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.

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Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. AMS–NOP–10–0045; NOP–10–03]

National Organic Program: Notification of Final Guidance on Products in the ''Made With Organic * * *'' Labeling Category

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of availability of final guidance.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the availability of a final guidance document intended for use by accredited certifying agents and certified organic operations. The final guidance document is entitled: Products in the ''Made with Organic ***'' Labeling Category (NOP 5032). This guidance is intended to inform the public of the National Organic Program's (NOP) current thinking on this topic.

DATES: The final guidance document announced by this notification of availability is effective on May 2, 2014.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250, Email: *Melissa.bailey@ams.usda.gov;* Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 2011, the National Organic Program (NOP) published in the **Federal Register** a notice of availability with request for public comment on a draft guidance document entitled: Made with Organic (Specified Ingredients or Food Group(s)) Products—Product Composition and Use of Percentage Statements (NOP 5032) (76 FR 2328). The draft guidance addressed the labeling, composition and use of percentage statements in ''made with organic (specified ingredients or food group(s))'' products. The topics covered in the draft guidance document addressed recommendations issued by the National Organic Standards Board (NOSB) and questions posed by accredited certifying agents and certified operations about the composition and labeling portions of the USDA organic regulations (7 CFR 205.301 and 205.304). The draft guidance document can be viewed on-line at *http://www.ams.usda.gov/NopDraftGuidance*. The 60-day comment period closed on March 14, 2011.

The NOP received a total of 26 individual comments on the draft guidance document. Based on the comments received, the NOP revised and is publishing a final guidance on this topic now entitled: Products in the ''Made with Organic * * *'' Labeling Category (NOP 5032). This guidance clarifies the following aspects of products in this labeling category, referred to as ''made with organic * * *:''

1. Composition;
2. Compliant organic labeling claims;
3. Organic and nonorganic forms of the same ingredient;
4. Percentage of organic ingredients statements; and
5. Ingredients or food groups in the ''made with organic * * *'' claim.

The guidance document includes an appendix (NOP 5032–1) where the NOP provides a complete discussion of the comments received and the rationale behind any changes made to the guidance document.

The final guidance document is now available from the NOP through ''The Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operations.'' The Program Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at *http://www.ams.usda.gov/NopProgramHandbook*.

II. Significance of Guidance

This final guidance document is being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440). The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. This final guidance document represents the NOP's current position on this topic. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to offer uniform methods for operations that comply with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501–6522) and USDA organic regulations, thereby reducing the burden on operators of developing their own methods and to simplify audits and inspections. Alternative approaches that can demonstrate compliance with the OFPA and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

III. Electronic Access

Persons with access to the Internet may obtain a copy of the final guidance document from the NOP's Web site at *http://www.ams.usda.gov/nop*. Request for hard copies of the final guidance document can be obtained by submitting a written request to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notification of availability.

Authority: 7 U.S.C. 6501–6522.

Dated: April 28, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–09963 Filed 4–30–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 6

[Docket ID OCC–2013–0008]

RIN 1557–AD69

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 217

[Regulation H and Q; Docket No. R–1460]

RIN 7100–AD 99

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE01

Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions

AGENCIES: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are adopting a final rule that strengthens the agencies' supplementary leverage ratio standards for large, interconnected U.S. banking organizations (the final rule). The final rule applies to any U.S. top-tier bank holding company (BHC) with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody (covered BHC) and any insured depository institution (IDI) subsidiary of these BHCs (together, covered organizations). In the revised regulatory capital rule adopted by the agencies in July 2013 (2013 revised capital rule), the agencies established a minimum supplementary leverage ratio of 3 percent, consistent with the minimum leverage ratio adopted by the Basel Committee on Banking Supervision (BCBS), for banking organizations subject to the agencies' advanced approaches risk-based capital rules. The final rule establishes enhanced supplementary leverage ratio standards for covered BHCs and their subsidiary IDIs. Under the final rule, an IDI that is a subsidiary of a covered BHC must maintain a supplementary leverage ratio of at least 6 percent to be well capitalized under the agencies' prompt corrective action (PCA) framework. The Board also is adopting in the final rule a supplementary leverage ratio buffer (leverage buffer) for covered BHCs of 2 percent above the minimum supplementary leverage ratio requirement of 3 percent. The leverage buffer functions like the capital conservation buffer for the risk-based capital ratios in the 2013 revised capital rule. A covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure is not subject to limitations on distributions and discretionary bonus payments under the final rule.

Elsewhere in today's **Federal Register**, the agencies are proposing changes to the 2013 revised capital rule's supplementary leverage ratio, including changes to the definition of total leverage exposure, which would apply to all advanced approaches banking organizations and thus, if adopted, would affect banking organizations subject to this final rule.

DATES: The final rule is effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor, (202) 649–6981; Nicole Billick, Risk Expert, (202) 649–7932, Capital Policy; or Carl Kaminski, Counsel; or Henry Barkhausen, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance M. Horsley, Assistant Director, (202) 452–5239; Juan C. Climent, Senior Supervisory Financial Analyst, (202) 872–7526; or Sviatlana Phelan, Senior Financial Analyst, (202) 912–4306, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin McDonough, Senior Counsel, (202) 452–2036; April C. Snyder, Senior Counsel, (202) 452–3099; or Mark C. Buresh, Attorney, (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: George French, Deputy Director, *gfrench@fdic.gov;* Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov;* Karl Reitz, Chief, Capital Markets Strategies Section, *kreitz@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, *regulatorycapital@fdic.gov* or (202) 898–6888; or Mark Handzlik, Counsel, *mhandzlik@fdic.gov;* Michael Phillips, Counsel, *mphillips@fdic.gov;* Rachel Ackmann, Senior Attorney, *rackmann@fddic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 2013, the agencies published in the **Federal Register**, for public comment, a joint notice of proposed rulemaking (the 2013 NPR) to strengthen the agencies' supplementary leverage ratio standards for large, interconnected U.S. banking organizations.[1] As noted in the 2013 NPR, the recent financial crisis showed that some financial companies had grown so large, leveraged, and interconnected that their failure could pose a threat to overall financial stability. The sudden collapses or near-collapses of major financial companies were among the most destabilizing events of the crisis. As a result of the imprudent risk taking of major financial companies and the severe consequences to the financial system and the economy associated with the disorderly failure of these companies, the U.S. government (and many foreign governments in their home countries) intervened on an unprecedented scale to reduce the impact of, or prevent, the failure of these companies and the attendant consequences for the broader financial system.

A perception persists in the markets that some companies remain ''too big to fail,'' posing an ongoing threat to the financial system. First, the perception that certain companies are ''too big to fail'' reduces the incentives of shareholders, creditors and counterparties of these companies to discipline excessive risk-taking by the companies. Second, it produces competitive distortions because those companies can often fund themselves at a lower cost than other companies. This distortion is unfair to smaller companies, damaging to fair competition, and may artificially encourage further consolidation and concentration in the financial system.

An important objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) is to mitigate the threat to financial stability posed by systemically-

[1] 78 FR 51101 (August 20, 2013).

important financial companies.[2] The agencies have sought to address this concern through enhanced supervisory programs, including heightened supervisory expectations for large, complex institutions and stress testing requirements. In addition, the Dodd-Frank Act mandates the implementation of a multi-pronged approach to address this concern: A new orderly liquidation authority for financial companies (other than banks and insurance companies); the establishment of the Financial Stability Oversight Council, empowered with the authority to designate nonbank financial companies for Board supervision (designated nonbank financial companies); stronger regulation of large BHCs and designated nonbank financial companies through enhanced prudential standards; and enhanced regulation of over-the-counter (OTC) derivatives, other core financial markets and financial market utilities.

This final rule builds on these efforts by adopting enhanced supplementary leverage ratio standards for the largest and most interconnected U.S. banking organizations. The agencies have broad authority to set regulatory capital standards.[3] As a general matter, the agencies' authority to set regulatory capital requirements and standards for the institutions they regulate derives from the International Lending Supervision Act (ILSA)[4] and the PCA provisions[5] of the Federal Deposit Insurance Act (FDIA). In enacting ILSA, Congress codified its intentions, providing that ''it is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.''[6] ILSA encourages the agencies to work with their international counterparts to establish effective and consistent supervisory policies, standards, and practices and specifically provides the agencies authority to set broadly applicable minimum capital levels[7] as well as individual capital requirements.[8] Additionally, ILSA specifically directs U.S. regulators to encourage governments, central banks, and bank regulatory authorities in other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international banking.[9] With its focus on international lending and the safety of the broader financial system, ILSA provides the agencies with the authority to consider an institution's interconnectedness and other systemic factors when setting capital standards.

As part of the overall prudential framework for bank capital, the agencies have long expected institutions to maintain capital well above regulatory minimums and have monitored banking organizations' capital adequacy through the supervisory process in accordance with this expectation. This expectation is also codified for IDIs in the statutory PCA framework, which requires the agencies to establish capital ratio thresholds for both leverage and risk-based capital that banking organizations must satisfy to be considered well capitalized.

Additionally, section 165 of the Dodd-Frank Act requires the Board to develop enhanced prudential standards for BHCs with total consolidated assets of $50 billion or more and for designated nonbank companies (together, section 165 covered companies).[10] The Dodd-Frank Act requires that prudential standards for section 165 covered companies include enhanced leverage standards. In general, the Dodd-Frank Act directs the Board to implement enhanced prudential standards that strengthen existing micro-prudential supervision and regulation of individual companies and incorporate macro-prudential considerations to reduce threats posed by section 165 covered companies to the stability of the financial system as a whole. The enhanced prudential standards must increase in stringency based on the systemic footprint and risk characteristics of individual companies. When differentiating among companies for purposes of applying the standards established under section 165, the Board may consider the companies' size, capital structure, riskiness, complexity, financial activities, and any other risk-related factors the Board deems appropriate.[11]

In the agencies' experience, strong capital is an important safeguard that helps financial institutions navigate periods of financial or economic stress. Maintenance of a strong capital base at the largest, systemically important institutions is particularly important because capital shortfalls at these institutions can contribute to systemic distress and can have material adverse economic effects. Higher capital standards for these institutions would place additional private capital at risk, thereby reducing the risks for the Deposit Insurance Fund while improving the ability of these institutions to serve as a source of credit to the economy during times of economic stress. Furthermore, the agencies believe that the enhanced supplementary leverage ratio standards would reduce the likelihood of resolutions, and would allow regulators to tailor resolution efforts were a resolution to become necessary. By further enhancing the capital strength of covered organizations, the enhanced supplementary leverage ratio standards could counterbalance possible funding cost advantages that these organizations may enjoy as a result of being perceived as ''too big to fail.''

A. The Supplementary Leverage Ratio

The 2013 revised capital rule comprehensively revises and strengthens the capital regulations applicable to banking organizations.[12] It strengthens the definition of regulatory capital, increases the minimum risk-based capital requirements for all banking organizations, and modifies the requirements for how banking organizations calculate risk-weighted assets. The 2013 revised capital rule also retains the generally applicable leverage ratio requirement (generally applicable leverage ratio) that the agencies believe to be a simple and transparent measure of capital adequacy that is credible to market participants and ensures a meaningful amount of capital is available to absorb losses. The minimum generally applicable leverage

[2] *See, e.g.,* Public Law 111–203, 124 Stat. 1376, 1394, 1571, 1803 (2010).

[3] The agencies have authority to establish capital requirements for depository institutions under the prompt corrective action provisions of the Federal Deposit Insurance Act (12 U.S.C. 1831o). In addition, the Federal Reserve has broad authority to establish various regulatory capital standards for BHCs under the Bank Holding Company Act and the Dodd-Frank Act. *See,* for example, sections 165 and 171 of the Dodd-Frank Act (12 U.S.C. 5365 and 12 U.S.C. 5371).

[4] 12 U.S.C. 3901–3911.

[5] 12 U.S.C. 1831o.

[6] 12 U.S.C. 3901(a).

[7] ''Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.'' 12 U.S.C. 3907(a)(1).

[8] ''Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.'' 12 U.S.C. 3907(a)(2).

[9] 12 U.S.C. 3907(b)(3)(C).

[10] *See* 12 U.S.C. 5365; 77 FR 593 (January 5, 2012); and 77 FR 76627 (December 28, 2012).

[11] 12 U.S.C. 5365(a)(2)(A).

[12] 78 FR 55340 (September 10, 2013) (FDIC) and 78 FR 62018 (October 11, 2013) (OCC and Board). On April 8, 2014, the FDIC adopted as final the 2013 revised capital rule, with no substantive changes.

ratio requirement [13] of 4 percent applies to all IDIs, and is the ''generally applicable'' leverage ratio for purposes of section 171 of the Dodd-Frank Act. Accordingly, the minimum tier 1 leverage ratio requirement for depository institution holding companies is also 4 percent.[14]

In the 2013 revised capital rule, the agencies established a minimum supplementary leverage ratio requirement of 3 percent for banking organizations subject to the banking agencies' advanced approaches rules (advanced approaches banking organizations) [15] based on the BCBS's Basel III leverage ratio (Basel III leverage ratio) as it was established at the time.[16] The agencies believe the introduction of the leverage ratio by the BCBS is an important step in improving the framework for international capital standards. The Basel III leverage ratio is a non-risk-based measure of tier 1 capital relative to an exposure amount that includes both on- and off-balance sheet exposures. The agencies implemented the Basel III leverage ratio through the supplementary leverage ratio, which the agencies believe to be particularly relevant for large, complex organizations that are internationally active and often have substantial off-balance sheet exposures.

The agencies' supplementary leverage ratio is the arithmetic mean of the ratio of an advanced approaches banking organization's tier 1 capital to total leverage exposure (each as defined in the 2013 revised capital rule) calculated as of the last day of each month in the reporting quarter. In contrast to the denominator of the agencies' generally applicable leverage ratio, which includes only on-balance sheet assets, the denominator for the supplementary leverage ratio is based on a banking organization's total leverage exposure, which includes all on-balance sheet assets and many off-balance sheet exposures. The 2013 revised capital rule requires that an advanced approaches banking organization calculate and report its supplementary leverage ratio beginning in 2015 and maintain a supplementary leverage ratio of at least 3 percent beginning in 2018.

Because total leverage exposure includes off-balance sheet exposures, for any given company with material off-balance sheet exposures the amount of capital required to meet the supplementary leverage ratio will exceed the amount of capital that is required to meet the generally applicable leverage ratio, assuming that both ratios are set at the same level. To illustrate, as the agencies noted in the 2013 NPR, based on supervisory estimates for a group of advanced approaches banking organizations using supervisory data as of third quarter 2012,[17] a 5 percent supplementary leverage ratio corresponds to roughly a 7.2 percent generally applicable leverage ratio and a 6 percent supplementary leverage ratio corresponds to roughly an 8.6 percent generally applicable leverage ratio. According to supervisory estimates, 2013 data yield similar results. These estimates represent averages and the numbers vary from institution to institution.

The agencies noted in the 2013 revised capital rule and in the 2013 NPR that the BCBS planned to collect additional data from institutions in member countries and potentially make adjustments to the Basel III leverage ratio requirement. The agencies indicated that they would review any modifications to the Basel III leverage ratio made by the BCBS and consider proposing to modify the supplementary leverage ratio consistent with those revisions, as appropriate.

In June 2013, the BCBS published and requested comment on a consultative paper that proposed significant modifications to the denominator of the Basel III leverage ratio (consultative paper).[18] The consultative paper proposed a number of approaches that generally would increase the denominator of the leverage ratio originally set out in the 2010 Basel III framework. Based on its review of comments on the consultative paper, in January 2014, the BCBS adopted certain aspects of the proposals in the consultative paper as well as other changes to the denominator (BCBS 2014 revisions).[19] The BCBS has indicated that it will continue to study the Basel III leverage ratio through the implementation phase into 2017 and will consider further modifications to the ratio.

As discussed further below, several commenters raised concerns about the agencies' intention to adopt the proposed enhanced supplementary leverage ratio standards while the BCBS continues to revise the Basel III leverage ratio. The agencies believe that it is important to maintain consistency with international standards, as appropriate, for internationally active banking organizations and, accordingly, have published a separate notice of proposed rulemaking elsewhere in today's **Federal Register** that seeks public comment on revisions to the denominator of the supplementary leverage ratio that would be applicable to advanced approaches banking organizations (2014 NPR). These proposed revisions are generally consistent with the BCBS 2014 revisions.

The agencies also believe that it is important to establish enhanced supplementary leverage ratio standards for the largest, most interconnected banking organizations to strengthen the overall regulatory capital framework in the United States. Therefore, after reviewing comments on the 2013 NPR, the agencies are finalizing the enhanced supplementary leverage ratio standards substantially as proposed, based on the methodology for determining the supplementary leverage ratio in the 2013 revised capital rule. As discussed further below, the agencies believe the proposed changes to the supplementary leverage ratio denominator in the 2014 NPR would be responsive to some of the concerns that commenters raised in connection with the 2013 NPR. The agencies will carefully consider all comments received on the proposed revisions to the supplementary leverage

[13] The generally applicable leverage ratio under the 2013 revised capital rule is the ratio of a banking organization's tier 1 capital to its average total consolidated assets as reported on the banking organization's regulatory report minus amounts deducted from tier 1 capital.

[14] 12 U.S.C. 5371.

[15] A banking organization is subject to the advanced approaches rule if it has consolidated assets of at least $250 billion, if it has total consolidated on-balance sheet foreign exposures of at least $10 billion, if it elects to apply the advanced approaches rule, or it is a subsidiary of a depository institution, bank holding company, or savings and loan holding company that uses the advanced approaches to calculate risk-weighted assets. *See* 78 FR 62018, 62204 (October 11, 2013); 78 FR 55340, 55523 (September 10, 2013).

[16] The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org. See* BCBS, ''Basel III: A global regulatory framework for more resilient banks and banking systems'' (December 2010 (revised June 2011)), available at *http://www.bis.org/publ/bcbs189.htm.*

[17] The supervisory estimates were generated using CCAR September 2012 and CCAR September 2013 data.

[18] *See* BCBS ''Revised Basel III leverage ratio framework and disclosure requirements—consultative document'' (June 2013) available at *http://www.bis.org/publ/bcbs251.htm.*

[19] *See* BCBS ''Basel III leverage ratio framework and disclosure requirements'' (January 2014) available at *http://www.bis.org/publ/bcbs270.htm.*

ratio calculation in the 2014 NPR, including those related to the impact of the proposed changes on advanced approaches banking organizations' capital requirements.

B. The Proposed Enhanced Supplementary Leverage Ratio Standards

The 2013 NPR proposed applying enhanced supplementary leverage standards to any U.S. top-tier BHC that has more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody and any IDI subsidiary of such a BHC.[20] As explained in the 2013 NPR, the list of covered BHCs identified by these thresholds is consistent with the list of banking organizations that meet the BCBS definition of a global systemically important bank (G–SIB), based on year-end 2011 data.[21] In November 2011, the BCBS released a document entitled, *Global Systemically Important Banks (G–SIBs): Assessment methodology and the additional loss absorbency requirement,* which sets out a framework for a new capital surcharge for G–SIBs (BCBS G–SIB framework).[22] The BCBS G–SIB framework incorporates five broad characteristics of a banking organization that the agencies consider to be good proxies for, and correlated with, systemic importance: Size, complexity, interconnectedness, lack of substitutes, and cross-border activity. Further, the Board believes that the criteria and methodology used by the BCBS to identify G–SIBs are consistent with the criteria it must consider under the Dodd-Frank Act when tailoring enhanced prudential standards based on the systemic footprint and risk characteristics of individual section 165 covered companies.[23]

Under the 2013 NPR, a covered BHC would have been subject to a leverage buffer composed of tier 1 capital, in addition to the minimum 3 percent supplementary leverage ratio requirement established in the 2013 revised capital rule. Under the 2013 NPR, a covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure would not have been subject to limitations on its distributions and discretionary bonus payments. If a covered BHC were to maintain a leverage buffer of 2 percent or less, it would have been subject to increasingly strict limitations on its distributions and discretionary bonus payments. The proposed leverage buffer followed the same general mechanics and structure as the capital conservation buffer contained in the 2013 revised capital rule. Any constraints on distributions and discretionary bonus payments resulting from a covered BHC maintaining a leverage buffer of 2 percent or less would have been independent of any constraints imposed by the capital conservation buffer or other supervisory or regulatory measures.

As noted in the 2013 NPR, the 2013 revised capital rule incorporated the 3 percent supplementary leverage ratio minimum requirement into the PCA framework as an adequately capitalized threshold for IDIs subject to the advanced approaches risk-based capital rules, but did not establish a well-capitalized threshold for this ratio. Under the 2013 NPR, an IDI that is a subsidiary of a covered BHC would have been required to satisfy a 6 percent supplementary leverage ratio to be considered well-capitalized for PCA purposes.

II. Summary of Comments on the 2013 NPR

The agencies sought comment on all aspects of the 2013 NPR and received approximately 30 public comments from banking organizations, trade associations representing the banking or financial services industry, supervisory authorities, public interest advocacy groups, private individuals, members of Congress, and other interested parties. In general, comments from financial services firms, banking organizations, banking trade associations and other industry groups were critical of the 2013 NPR, while comments from organizations representing smaller banks or their supervisors, public interest advocacy groups and the public generally were supportive of the 2013 NPR. A detailed discussion of commenters' concerns and the agencies' response follows.

A. Timing of the Final Rule

A number of commenters made reference to the BCBS consultative paper that proposed to revise the denominator for the Basel III leverage ratio.[24] While the proposals outlined in the BCBS consultative paper were not part of the 2013 NPR, commenters stated that they believe the final BCBS changes eventually will be incorporated into the U.S. supplementary leverage ratio, and that it would be premature to finalize the 2013 NPR before the BCBS process is complete. Commenters recommended that a final rule adopting the proposed enhanced supplementary leverage ratio standards be delayed until the BCBS finalized the consultative paper and the Board adopted a final rule implementing enhanced prudential standards under section 165 of the Dodd Frank Act.[25] In addition, these commenters argued that the proposed enhanced supplementary leverage ratio standards, if applied in conjunction with the denominator changes proposed in the BCBS consultative paper, would result in inappropriately high capital charges.

The agencies emphasize that the 2013 NPR did not propose or seek comment on the revisions to the supplementary leverage ratio denominator that were being considered by the BCBS. The agencies are moving forward with the finalization of the proposed enhanced supplementary leverage ratio standards to further enhance the capital position of covered organizations and to strengthen financial stability. As noted earlier, the agencies are seeking comment elsewhere in today's **Federal Register** on the 2014 NPR, which proposes revisions to the definition of total leverage exposure in the 2013 revised capital rule as well as other proposed requirements relating to the supplementary leverage ratio that would reflect the BCBS 2014 revisions. The

[20] Under the 2013 NPR, applicability of the proposed enhanced supplementary leverage ratio standards would have been determined based on assets reported on a BHC's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C) or based on assets under custody as reported on a BHC's most recent Banking Organization Systemic Risk Report (FR Y–15).

[21] In November 2012, the Financial Stability Board and BCBS published a list of banks that meet the BCBS definition of a G–SIB based on year-end 2011 data. A revised list based on year-end 2012 data was published November 11, 2013 (available at *http://www.financialstabilityboard.org/publications/r_131111.pdf*). The U.S. top-tier bank holding companies that are currently identified as G–SIBs are Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

[22] *Available at http://www.bis.org/publ/bcbs207.pdf.* The BCBS published a revised version of this document in July 2013, available at *http://www.bis.org/publ/bcbs255.pdf.*

[23] *See* 12 U.S.C. 5365(a).

[24] *See* BCBS, ''Revised Basel III leverage ratio framework and disclosure requirements—consultative document'' (June 2013), available at *http://www.bis.org/publ/bcbs251.htm.*

[25] The Board's proposed rules to implement the provisions of sections 165 and 166 of the Dodd-Frank Act for bank holding companies with total consolidated assets of $50 billion or more and for nonbank financial firms supervised by the Board (domestic proposal) and for foreign banking organizations with total consolidated assets of $50 billion or more and foreign nonbank financial companies supervised by the Board (foreign proposal) can be found at 77 FR 594 (January 5, 2012) and 77 FR 76628 (December 28, 2012) for the domestic proposal and foreign proposal, respectively. The Board's final rule implementing these provisions is available at *http://www.federalreserve.gov/newsevents/press/bcreg/20140218a.htm.*

agencies believe that the proposed revisions to the definition of total leverage exposure in the 2014 NPR are responsive to a number of concerns that commenters expressed about the relationship between the BCBS process and the supplementary leverage ratio. As noted above, the agencies will carefully review all comments received on the 2014 NPR.

B. Scope of Application

The 2013 NPR would have applied enhanced supplementary leverage ratio standards to the largest, most interconnected U.S. BHCs and their subsidiary IDIs (specifically, to any U.S. top-tier BHC with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody and any IDI subsidiary of these BHCs).[26] Several commenters criticized the 2013 NPR's scope of application, including the proposed quantitative thresholds for determining applicability of the enhanced supplementary leverage ratio standards. These commenters stated that tying the application of the 2013 NPR to size alone would not be appropriate, as size is not always a reliable indicator of the degree of risk to financial stability. In addition, commenters stated that the quantitative thresholds may capture the G–SIBs today, but there is no assurance that this will be the case in the future. A few commenters asserted that applicability should be based on the systemic risk posed by an institution's failure and not just on quantitative thresholds. For instance, one commenter suggested extending the applicability of the final rule beyond the largest financial institutions to institutions that are smaller, but nonetheless are integral parts of the financial system. A few commenters favored expanding the quantitative thresholds of the 2013 NPR to include additional banking organizations, for example, by applying the proposed enhanced supplementary leverage ratio standards to all advanced approaches banking organizations. Some commenters asserted that using assets under custody as one of the metrics to determine the 2013 NPR's applicability significantly overstates the risk of the custody bank business model. In addition, several commenters suggested that it is not clear that the enhanced supplementary leverage ratio standards are necessary or appropriate for any organization. These commenters stated that substantial steps have been taken toward addressing ''too big to fail'' concerns, and that the 2013 NPR should not be extended to banking organizations that, in the commenters' view, may not present systemic risk.

The agencies have decided to finalize the proposed enhanced supplementary leverage ratio standards, including the proposed applicability thresholds, substantively as proposed. In the agencies' view, the proposed asset thresholds capture banking organizations that are so large or interconnected that they pose substantial systemic risk. As explained above, these banking organizations have also been identified by the BCBS as G–SIBs, which are subject to heightened risk-based capital standards under the Basel framework. The agencies believe the application of the enhanced supplementary leverage ratio standards to covered organizations is an appropriate way to further strengthen the ability of the these organizations to remain a going concern during times of economic stress and to minimize the likelihood that problems at these organizations would contribute to financial instability.

The agencies continue to believe that the benefits to financial stability of the enhanced supplementary leverage ratio standards are most pronounced for these large and systemically important institutions, and have decided not to extend these enhanced standards to smaller institutions. In addition, as also discussed in the 2013 NPR, it is anticipated that over time, as the BCBS G–SIB framework is implemented in the United States or revised by the BCBS, the agencies may consider modifying the scope of application of the enhanced supplementary leverage ratio standards to align more closely with the scope of application of the BCBS G–SIB framework. In addition, the agencies will otherwise continue to evaluate the applicability thresholds and may consider revising them in the future to ensure they remain appropriate.

C. Calibration of the Enhanced Supplementary Leverage Ratio Standards

The agencies received several comments expressing concern with the proposed calibration of the enhanced supplementary leverage ratio standards. Commenters stated that the proposed enhanced supplementary leverage ratio standards should be set no higher than those that would apply to banking organizations in other jurisdictions to maintain the competitive position of covered organizations with respect to their foreign competitors. A number of commenters viewed the proposed calibration as arbitrary, stating that it should be supported by quantitative studies of the cumulative impact of the enhanced supplementary leverage ratio standards and other financial reforms on the ability of U.S. banking organizations to provide financial services to customers and businesses. A number of commenters stated that the 2013 NPR would cause the supplementary leverage ratio to become the binding regulatory capital constraint, rather than a backstop to the risk-based capital measures, and expressed concern that an unintended consequence of a binding supplementary leverage ratio could be that covered organizations would divest lower risk assets and instead assume more risk, to the detriment of financial stability.

Some commenters expressed concern that a binding supplementary leverage ratio could have negative consequences, including the creation of disincentives for banking organizations to engage in robust risk assessment and management practices. Furthermore, according to commenters, the 2013 NPR could incentivize banking organizations to engage in financial activities with a higher risk-reward profile as there would be no regulatory capital benefit for holding low-risk assets, potentially resulting in institutions that are less stable. For instance, one commenter stated that unsecured commercial loans would be more attractive than secured lines of credit because the former have a stronger return on assets and both would require equal amounts of regulatory capital under the supplementary leverage ratio framework. The commenter warned that in the mortgage banking industry, this could constrain warehouse lines of credit needed to finance the production of new mortgages and mortgage-backed securities. Another commenter stated that the proposed enhanced supplementary leverage ratio standards could make it uneconomical for covered organizations to hold or provide unfunded revolving lines of credit with maturities of less than one year, cash, U.S. Treasuries, reverse repurchase agreements, certain traditional interest rate swaps, and credit default swaps on corporate bonds. Other commenters maintained that the 2013 NPR could incentivize banking organizations to hold the lowest quality assets possible within the constraints of the other credit quality regulations and, thus, would be fundamentally at odds with the

[26] Under the 2013 revised capital rule, a ''subsidiary'' is defined as a company controlled by another company, and a person or company ''controls'' a company if it: (1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or (2) consolidates the company for financial reporting purposes. *See* section 2 of the 2013 revised capital rule.

agencies' proposed liquidity coverage ratio (LCR) by encouraging banking organizations to divest low-risk assets above the minimum required by the proposed LCR.[27] In addition, according to commenters, banking organizations would find high-volume, low-risk and low-return, client-driven financial activities less profitable, such as deposit taking. As such, commenters stated that a binding leverage ratio would result in higher prices, less liquidity, and reduction of business lines that have lower returns on assets.

Some commenters recommended that the agencies use a more tailored approach to calibrate the proposed enhanced supplementary leverage ratio standards, for example by proposing a leverage buffer for covered BHCs that would be aligned with the capital surcharges provided in the BCBS G–SIB framework. These commenters asserted that there is significant diversity among G–SIBs in risk profile, operating structure, and approaches to balance sheet management and that a one-size-fits-all approach is unduly punitive for banking organizations with significant amounts of highly liquid, low-risk assets.

In contrast, a few commenters stated that the supplementary leverage ratio is a more accurate measure of regulatory capital than the risk-based capital ratios, easier to understand, comparable across firms, less prone to manipulation and, therefore, should be the binding capital standard. Commenters supported a revised calibration as strong, or stronger, than the one set forth in the 2013 NPR. For example, some commenters suggested substantially increasing the proposed enhanced supplementary leverage ratio standards for covered organizations (for example, by implementing an 8 percent well-capitalized threshold for any IDI subsidiary of a covered BHC and a 4 or 5 percent leverage buffer (in addition to the minimum 3 percent) for covered BHCs). These commenters argued that incentivizing covered organizations to be better capitalized as a group through the proposed standards would improve their ability to provide credit during periods of economic stress. Others supported either increasing or maintaining the proposed calibration of the enhanced supplementary leverage ratio standards by emphasizing the importance of constraining the risks large institutions pose to the financial system. Other commenters supported strengthening the supplementary leverage ratio standards based on their view that the risk-based capital framework is subjective and may excessively rely on the use of models.

With regard to the concerns raised by commenters about potential competitive disadvantages for covered organizations as a result of the proposed enhanced supplementary leverage ratio standards, in the agencies' experience, a strong regulatory capital base is a competitive strength for banking organizations, rather than a competitive weakness. Specifically, strong capital promotes confidence among banking organizations' market counterparties and bolsters the ability of banking organizations to lend and otherwise serve customers during stressed market conditions. The agencies are of the view that a strongly capitalized banking system also promotes the resilience of the broader economy because it promotes the stability of the financial system, which allows a wide range of firms to efficiently access funding and liquidity to meet their business needs. The agencies also note that banking organizations in the U.S. have long been subject to a leverage ratio framework, whereas banking organizations in other jurisdictions generally have not been subject to any leverage requirement. The agencies do not believe this longstanding difference has adversely affected the competitive strength of U.S. banking organizations. Finally, the agencies believe that the benefits to the banking and financial system from more resilient systemically important banking organizations outweigh any potential competitive disadvantages of related implementation costs that covered organizations may face.

With regard to the comments asserting that the proposed enhanced supplementary leverage ratio standards were arbitrary, the 2013 NPR described the agencies' approach to calibration. According to the agencies' analysis, a 3 percent minimum supplementary leverage ratio would have been too low to have meaningfully constrained the buildup of leverage at the largest institutions in the years leading up to the financial crisis. To address this issue the agencies proposed the enhanced supplementary leverage ratio standards.

The agencies believe that the leverage and risk-based capital ratios play complementary roles, with each offsetting potential weaknesses of the other. The 2013 revised capital rule implemented the capital conservation buffer framework (which is only applicable to risk-based capital ratios) and increased risk-based capital requirements more than it increased leverage requirements, reducing the ability of the leverage requirements to act as an effective complement to the risk-based requirements, as they had historically. As a result, the degree to which covered organizations could potentially benefit from active management of risk-weighted assets before they breach the leverage requirements may be greater. As described in the 2013 NPR, such potential behavior suggests that the increase in stringency of the leverage and risk-based standards should be more closely calibrated to each other so that they remain in an effective complementary relationship. These considerations were important in calibrating the enhanced supplementary leverage ratio standards. Specifically, the 2013 NPR noted that the proposed enhanced supplementary leverage ratio's well-capitalized threshold for IDI subsidiaries of covered BHCs and the proposed leverage buffer for covered BHCs would retain a degree of proportionality with the stronger tier 1 risk-based capital standards (including the minimum risk-based capital requirements and the capital conservation buffer) under the 2013 revised capital rule.

Consistent with the calibration goals described in the 2013 NPR, the agencies believe that the proposed enhanced supplementary leverage ratio standards should broadly preserve the historical relationship between the tier 1 leverage and risk-based capital levels for covered organizations, rather than fundamentally alter such a relationship as several commenters suggest. With respect to IDI subsidiaries of covered BHCs, the increase in stringency in terms of the additional tier 1 capital that would be required to be well capitalized under the enhanced supplementary leverage ratio standards is roughly equivalent to the increase in stringency resulting from the application of the 2013 revised capital rule's risk-based capital standards.

Moreover, in response to comments suggesting that the supplementary leverage ratio well-capitalized threshold for an IDI subsidiary of a covered BHC should result in the same amount of capital needed by a covered BHC to meet the minimum supplementary ratio requirement plus the proposed leverage buffer, the agencies note that the PCA framework and the proposed leverage buffer were designed for different purposes. The PCA framework is intended to ensure that problems at depository institutions are addressed promptly and at the least cost to the Deposit Insurance Fund. The leverage buffer (as well as the capital

[27] On November 29, 2013, the agencies issued a joint notice of proposed rulemaking that would implement quantitative liquidity requirements for certain banking organizations. *See* 78 FR 71818 (November 29, 2013).

conservation buffer) was designed and calibrated to provide incentives to banking organizations to hold sufficient capital to reduce the risk that their capital levels would fall below their minimum requirements during times of economic and financial stress. In addition, as discussed in the 2013 NPR, the relationship between the 5 percent supplementary leverage ratio for covered BHCs (resulting from the 3 percent minimum supplementary leverage ratio plus the 2 percent leverage buffer) and the 6 percent supplementary leverage ratio's well-capitalized threshold for IDI subsidiaries of covered BHCs is generally structurally consistent with the relationship between the 4 percent minimum leverage ratio for BHCs and the 5 percent well-capitalized leverage ratio threshold for IDIs under the generally applicable regulatory capital framework, including as revised under the 2013 revised capital rule.

The agencies note that the maintenance of a complementary relationship between the leverage and risk-based capital ratios is designed to mitigate any regulatory capital incentives for covered organizations to inappropriately increase their risk profile in response to a binding supplementary leverage ratio. Similarly, stress testing provides another mechanism to counterbalance the risk that these institutions could potentially increase their risk profile in response to a binding supplementary leverage ratio. If the supplementary leverage ratio is binding and covered organizations acquire more higher-risk assets, risk weights should increase until the risk-based capital framework becomes binding. Conversely, if a binding risk-based capital ratio induces an institution to expand portfolios whose risk is insufficiently addressed by the risk-based capital framework, its total leverage exposure would increase until the leverage ratio becomes binding. Moreover, the agencies believe that banking organizations choose their asset mix based on a variety of factors, including yields available relative to the overall cost of funds, the need to preserve financial flexibility and liquidity, revenue generation and the maintenance of market share and business relationships, and the likelihood that principal will be repaid.

The agencies also believe that the enhanced supplementary leverage ratio standards, together with the strong risk-based regulatory capital framework in the 2013 revised capital rule, will increase stability and improve safety and soundness in the banking system. In particular, the agencies believe that the complementary relationship between the enhanced supplementary leverage ratio standards and the risk-based capital framework under the 2013 revised capital rule will strengthen capital positions at covered organizations, thereby reducing the likelihood that they fail or experience severe difficulties.

With regard to the comments suggesting that the calibration of the enhanced supplementary leverage ratio should vary in accordance with the specific systemic footprint of a covered organization, the agencies note that such issues are addressed in part by the risk-differentiation that exists within the risk-based capital framework. The agencies believe that all covered organizations, despite differences in business models, are systemically important and highly interconnected and, therefore, uniformly-applied leverage capital standards across these organizations are warranted.

D. Economic Impact of the 2013 NPR on Specific Types of Securities and Credit Transactions and on the Custody Bank Business Model

Commenters also expressed concern about the effect the 2013 NPR would have for particular types of transactions and business models. Commenters asserted that the 2013 NPR would directly affect short-term securities financing transactions, including repurchase agreements, reverse repurchase agreements, and revolving lines of credit, among other similar transactions, by imposing additional capital requirements on low-risk exposures held by covered organizations when they enter into these arrangements. Some commenters argued that the enhanced supplementary leverage ratio standards may encourage covered organizations to reduce their participation in securities financing transactions. One commenter also indicated that the 2013 NPR would result in the entrance into the securities financing transactions market of smaller, less-experienced, and less well-capitalized counterparties who may fall outside existing regulatory oversight, resulting in additional systemic risk due to insufficient oversight of these counterparties. That commenter argued that the 2013 NPR may result in the overexposure to individual counterparties, because covered organizations could conclude that securities financing transactions are more costly to them and, as a result, may limit the availability (or the best terms) of this financing to only those asset managers to whom they provide other lines of service. In addition, commenters asserted that asset managers might respond by directing business to a single large banking organization in order to receive the best terms for securities financing transactions.

Several commenters argued that there would be less flexibility for mutual fund managers and insurance companies to execute certain transactions with covered organizations as a result of the enhanced supplementary leverage ratio standards, which could give rise to less liquid markets at the time that liquidity is needed the most. These commenters indicated that when mutual fund redemptions rise because individual investors desire liquidity, investment managers are required to meet those redemption requests immediately, and that if many requests come at once, the investment manager will use securities financing arrangements to smooth out the flow of capital, rather than be forced to sell investments in a rapid or disorderly fashion. Commenters also noted that if securities financing arrangements are less accessible, an investment manager may incur higher costs related to the forced sale of underlying securities.

Some commenters suggested that the agencies recalibrate the enhanced supplementary leverage ratio standards to better reflect the business model and risk profile of custody banks, either through an approach tied to each covered company's G–SIB risk-based capital surcharge (which incorporates various measures to identify systemic risk) or an adjustment specific to these organizations, because a one-size-fits-all approach would be unduly punitive for covered organizations with significant amounts of highly liquid, low-risk assets. One commenter asserted that custody banks have balance sheets that are uniquely constructed as they are built around client deposits derived from the provision of core safekeeping and fund administration services, whereas most other covered organizations feature extensive commercial and investment banking operations. Some commenters asserted that the enhanced supplementary leverage ratio standards would significantly punish or effectively limit important custody bank functions such as those which are associated with central bank deposits and committed facilities. These commenters also noted that the enhanced supplementary leverage ratio standards may limit the ability of custody banks to accept deposits, particularly during periods of systemic stress. One commenter asserted that global payment systems could be adversely affected by a

reduction in central bank balances, which are broadly used by banking organizations to reduce the risk of payment failures and facilitate consistent and smooth payment flows. In addition, some commenters asserted that the enhanced supplementary leverage ratio standards would reduce incentives to hold low-risk assets and would increase the cost to comply with increased margin requirements, particularly initial margin, for derivatives transactions. The agencies note that several of the commenters' concerns were related to aspects of the BCBS consultative paper.

With regard to the comments expressing concern about the impact of the enhanced supplementary leverage ratio standards on securities financing transactions, the agencies believe that certain provisions of the 2014 NPR would address several of these concerns. In addition, the agencies believe it is important to consider that counterparties may view favorably a banking organization's maintenance of a meaningfully higher supplementary leverage ratio. To the extent this occurs, there might be some reduction in a banking organization's cost of funds that potentially offsets any costs related to holding more regulatory capital. In this regard, the agencies also note that any change in regulatory capital costs would affect a banking organization's overall cost of funds only to the extent it affects the weighted average cost of its deposits, debt, and equity.

The agencies believe that using daily average balance sheet assets, rather than requiring the average of three end-of-month balances in the calculation of the supplementary leverage ratio under the 2013 revised capital rule would be an appropriate way to address the commenters' concerns on the impact of spikes in deposits and, in the 2014 NPR, are proposing changes to the calculation of total leverage exposure that would incorporate this concept.

Likewise, for purposes of determining total leverage exposure, the 2014 NPR would permit cash variation margin that satisfies certain requirements to reduce the positive mark-to-fair value of derivative contracts. The agencies believe this proposed revision in the 2014 NPR would address the commenters' concerns regarding the potential increase in the cost to comply with increased margin requirements.

E. Measure of Capital Used as the Numerator of the Supplementary Leverage Ratio

The agencies sought comment on the appropriate measure of capital for the numerator of the supplementary leverage ratio. Many commenters supported tier 1 capital as the appropriate measure of capital for the numerator of the supplementary leverage ratio because it is designed specifically to absorb losses on a going concern basis and has been meaningfully strengthened under the 2013 revised capital rule.

One commenter encouraged the agencies to allow covered banking organizations to include the amount of a covered organization's allowance for loan and lease losses (ALLL) because it is available to absorb losses. A few commenters, however, asserted that the numerator of the supplementary leverage ratio should be common equity tier 1 (CET1) capital. One commenter supported this assertion with the observation that CET1 capital is the standard most likely to keep an institution solvent and able to lend during periods of market distress, and suggested it would be the only measure of capital strength trusted by the markets during a financial crisis. Another commenter asserted that a tangible equity measure is preferable because it is the most simple, transparent, and useful measure of loss-absorbing capital.

One commenter recognized the importance of having a single definition of tier 1 capital for both risk-based and leverage requirements, but urged the agencies to revisit the treatment of unrealized gains and losses included in accumulated other comprehensive income (AOCI) for large banking organizations under the 2013 revised capital rule.

The agencies have considered the comments and have decided to retain tier 1 capital as the numerator of the supplementary leverage ratio. The agencies agree that CET1 capital is the most conservative measure of capital defined in the 2013 revised capital rule and has the highest capacity to absorb losses, similar to most common descriptions of ''tangible common equity.'' However, as a practical matter for U.S. banking organizations, tier 1 capital consists of CET1 capital plus non-cumulative perpetual preferred stock, a form of preferred stock that the agencies believe has strong loss-absorbing capacity. Accordingly, the agencies believe that tier 1 capital, as defined in the 2013 revised capital rule, is an appropriately conservative measure of capital for the purposes of the supplementary leverage ratio. Furthermore, tier 1 capital incorporates substantial regulatory adjustments and deductions that are not typically made from market measures of tangible equity. Moreover, using tier 1 capital as the numerator of the supplementary leverage ratio has the advantage of maintaining consistency with the numerator of the leverage ratio that has long applied broadly to U.S. banking organizations and that now applies to banking organizations in other jurisdictions adopting the Basel III leverage ratio.

With respect to allowing covered banking organizations to include ALLL as part of the capital measure for the numerator, the agencies note that ALLL is partially includable in tier 2 capital under the risk-based capital framework and under the 2013 revised capital rule. However, ALLL is not includable in tier 1 capital and the agencies believe that such an inclusion would weaken the quality of tier 1 capital as it relates to the supplementary leverage ratio when compared to the risk-based capital framework.

The agencies considered comments on the recognition of unrealized gains and losses in AOCI in connection with the development of the 2013 revised capital rule, which requires advanced approaches banking organizations to recognize unrealized gains and losses in AOCI for purposes of determining CET1 capital.[28] The agencies believe that requiring a banking organization to reflect unrealized gains and losses in regulatory capital provides a more accurate depiction of its loss-absorption capacity at a specific point in time, which is particularly important for large, internationally active banking organizations. For this reason and the reasons discussed above, the agencies are retaining tier 1 capital as the numerator of the enhanced supplementary leverage ratio standards under this final rule.[29]

F. Total Leverage Exposure Definition

The 2013 NPR would not have amended the definition of total leverage exposure (the denominator of the supplementary leverage ratio) under the 2013 revised capital rule. However, a significant number of commenters criticized the components and methodology for calculating total leverage exposure.

[28] Banking organizations that are not subject to the advanced approaches rule may elect to opt out of the requirement to recognize unrealized gains and losses in AOCI for purposes of determining CET1 capital.

[29] *See* section III.C. of the preamble in the 2013 final capital rule issued by the Board and OCC for a discussion of accumulated other comprehensive income. 78 FR 62018, 62026–62027 (October 11, 2013). *See* section V.B.2.c. of the preamble in the 2013 interim final capital rule issued by the FDIC for a discussion of accumulated other comprehensive income. 78 FR 55340, 55377–55380 (September 10, 2013).

Many commenters asserted that total leverage exposure should be more risk-sensitive. For instance, commenters encouraged the agencies to exclude highly liquid assets, such as cash on hand and claims on central banks, and sovereign securities, particularly U.S. Treasuries, from total leverage exposure. Commenters maintained that, if the agencies opt to not exclude risk-free or very low-risk, highly liquid assets from total leverage exposure, then these assets should be discounted according to their relative levels of liquidity similar to the categories of eligible assets under the standardized approach in the 2013 revised capital rule. In addition, commenters stated that bank deposits with central banks such as the Federal Reserve Banks should be excluded in order to accommodate increases in banks' assets, both temporary and sustained, that occur as a result of macroeconomic factors and monetary policy decisions, particularly during periods of financial market stress. Commenters urged the agencies to exclude assets such as U.S. government obligations securing public sector entity (PSE) deposits from total leverage exposure. Commenters argued that a banking organization holding PSE deposits is required to pledge U.S. Treasuries to collateralize the deposits, and that if U.S. Treasuries are not excluded from total leverage exposure, the cost of additional capital would result in higher costs being passed on to the PSEs. Another commenter, however, asked that the agencies not introduce any risk-based capital measure into the supplementary leverage ratio.[30]

Several commenters encouraged the agencies not to include in total leverage exposure the notional amount of all off-balance sheet assets, particularly for undrawn commitments. Commenters stated that using the notional value is inaccurate, particularly for trade finance and committed credit lines. Commenters encouraged the agencies to use the more granular standardized approach credit conversion factors (CCF) in the 2013 revised capital rule.

With respect to the commenters' request for more risk-sensitivity in the supplementary leverage ratio calculation, the agencies believe that excluding categories of assets from the denominator of the supplementary leverage ratio is generally inconsistent with the intended role of this ratio as an overall limitation on leverage that does not differentiate across asset types. Accordingly, the agencies have decided not to exempt any categories of balance sheet assets from the denominator of the supplementary leverage ratio in the final rule. Thus, for example, cash, U.S. Treasuries, and deposits at the Federal Reserve are included in the denominator of the supplementary leverage ratio, as has been the case in the agencies' generally applicable leverage ratio. The agencies recognize the low risk of these assets under the agencies' risk-based capital rules, which complement the minimum supplementary leverage ratio requirement and the enhanced supplementary leverage ratio standards, as discussed above. Excluding specific categories of assets from the supplementary leverage ratio denominator would in effect allow banking organizations to finance these assets exclusively with debt, potentially resulting in a significant increase in a banking organizations' ability to deploy financial leverage.

With regard to the comments criticizing the use of the notional amounts of off-balance sheet commitments for purposes of the supplementary leverage ratio, the agencies are seeking comment on proposed changes to the denominator in the 2014 NPR that would include the use of standardized approach CCFs for most off-balance sheet commitments.

G. Proposed Basel III Leverage Ratio Revisions

A number of commenters were concerned about the relationship between the enhanced supplementary leverage ratio standards and the revisions to the Basel III leverage ratio framework proposed by the BCBS consultative paper, which proposed a leverage ratio exposure measure that would result in greater reported exposure than the total leverage exposure as defined in the 2013 revised capital rule.

A number of commenters were concerned that covered organizations would be placed at a competitive disadvantage relative to foreign competitors if the enhanced supplementary leverage ratio standards in the U.S. are set at a higher level than the Basel III leverage ratio. Some commenters also expressed concern that the proposed BCBS revisions to the denominator would be inappropriately restrictive and might be incorporated into the U.S. supplementary leverage ratio. However, another commenter argued that a stronger leverage ratio standard would enhance the competitive position of U.S. banking organizations by improving the relative stability and financial strength of the U.S. banking system.

One commenter included a study of the impact of the revisions proposed in the BCBS's consultative paper, and, where relevant, the U.S. enhanced supplementary leverage ratio standards, on the U.S. banking industry, products offered by U.S. banks, and U.S. markets. The study concludes that, on average, U.S. advanced approaches banking organizations (including U.S. G-SIBs) exceed the 3 percent supplementary leverage ratio threshold based both on the ratio as formulated in the Basel III leverage ratio framework and after giving effect to the BCBS proposed revisions, but when measured against the proposed enhanced supplementary leverage ratio standards, U.S. advanced approaches banking organizations would have substantial tier 1 capital shortfalls. Specifically, the study suggests that if the revisions proposed in the consultative paper and the proposed enhanced supplementary leverage ratio standards were both implemented, the U.S. advanced approaches banking organizations would need $202 billion in additional tier 1 capital or a reduction in exposures of $3.7 trillion to meet those standards, and to meet the proposed enhanced supplementary leverage ratio standards without giving effect to the BCBS consultative paper changes, these banking organizations would need to raise $69 billion in additional capital or reduce exposures by $1.2 trillion. The study suggests that if the agencies adopted the Basel proposed total leverage exposure as contemplated in the consultative paper in combination with the proposed enhanced supplementary leverage ratio standards, the leverage ratio would become the binding constraint for banking organizations holding 67 percent of U.S. G–SIB assets.

One commenter, on the other hand, encouraged the agencies to revise the denominator of the supplementary leverage ratio in accordance with the BCBS's consultative paper. This commenter further encouraged the agencies to restrict derivatives netting permitted under the BCBS consultative paper and to substantially increase the standardized measurement of the potential future exposure for derivative transactions. Similarly, another commenter asked the agencies to consider the use of International Financial Reporting Standards (IFRS) for purposes of measuring off-balance sheet derivatives exposures.

Neither the 2013 NPR nor the final rule includes the changes to total leverage exposure described in the

[30] One commenter also noted that retaining the proposal to include U.S. Treasury debt securities in total leverage exposure could present certain national security concerns.

BCBS consultative paper. Therefore, the agencies' supplementary leverage ratio is consistent with the international leverage ratio established by the BCBS in 2010. The agencies' analysis of the impact of this final rule is summarized in the next section of this preamble.

As discussed above, in January 2014 the BCBS adopted certain aspects of the proposals outlined in the BCBS consultative paper as well as other changes to the denominator. The changes to the denominator included, among other items, revising CCFs for certain off-balance sheet exposures, incorporating the notional amount of sold credit protection (that is, credit derivatives sold by a banking organization acting as a credit protection provider) in total leverage exposure, and modifying the measure of exposure for derivatives and repo-style transactions, including changes to the criteria for recognizing netting for repo-style transactions and cash collateral for derivatives. The agencies believe that the changes introduced by the BCBS strengthen the Basel III leverage ratio in important ways. In the 2014 NPR, published elsewhere in today's **Federal Register**, the agencies are proposing revisions to the supplementary leverage ratio that are generally consistent with the BCBS 2014 revisions. The agencies believe that the proposed revisions to the definition of total leverage exposure published in the 2014 NPR are responsive to a number of concerns that commenters expressed about the relationship between the BCBS process and the supplementary leverage ratio. In this regard, the agencies will carefully review all comments received on these aspects of the definition of total leverage exposure in the 2014 NPR.

H. Impact Analysis

Commenters suggested that, in addition to waiting for the BCBS to finalize the denominator of the Basel leverage ratio, the agencies should conduct a quantitative impact study to assess the cumulative impact of bank capital and other financial reform regulations on the ability of U.S. banking organizations to provide financial services to consumers and businesses.

In the 2013 NPR, the agencies cited data from the Board's Comprehensive Capital Analysis and Review (CCAR) process in which all of the agencies participate. This information reflects banking organizations' own projections of their supplementary leverage ratios under the supervisory baseline scenario, including institutions' own assumptions about earnings retention and other strategic actions.

As noted in the 2013 NPR, in the 2013 CCAR, all 8 covered BHCs met the 3 percent supplementary leverage ratio as of third quarter 2012, and almost all projected that their supplementary leverage ratios would exceed 5 percent at year-end 2017. If the enhanced supplementary leverage ratio standards had been in effect as of third quarter 2012, covered BHCs under the 2013 NPR that did not exceed a minimum supplementary leverage ratio requirement of 3 percent plus a 2 percent leverage buffer would have needed to increase their tier 1 capital by about $63 billion to meet that ratio.

Because CCAR is focused on the consolidated capital of BHCs, BHCs did not project future Basel III leverage ratios for their IDIs. To estimate the impact of the 2013 NPR on the lead subsidiary IDIs of covered BHCs, the agencies assumed that an IDI has the same ratio of total leverage exposure to total assets as its BHC. Using this assumption and CCAR 2013 projections, all 8 lead subsidiary IDIs of covered BHCs were estimated to meet the 3 percent supplementary leverage ratio as of third quarter 2012. If the enhanced supplementary leverage ratio standards had been in effect as of third quarter 2012, the lead subsidiary IDIs of covered BHCs that did not meet a 6 percent supplementary leverage ratio would have needed to increase their tier 1 capital by about $89 billion to meet that ratio.

In finalizing the rule, the agencies updated their supervisory estimates of the amount of tier 1 capital that would be required for covered BHCs and their lead subsidiary IDIs to meet the enhanced supplementary leverage ratio standards. Using updated CCAR estimates, all 8 covered BHCs meet the 3 percent supplementary leverage ratio as of fourth quarter 2013. If the enhanced supplementary leverage ratio standards had been in effect as of fourth quarter 2013, CCAR data suggests that covered BHCs that would not have met a 5 percent supplementary leverage ratio would have needed to increase their tier 1 capital by about $22 billion to meet that ratio.

Assuming that an IDI has the same ratio of total leverage exposure to total assets as its BHC to estimate the impact at the IDI level, the updated CCAR data indicates that all 8 lead subsidiary IDIs of covered BHCs meet the 3 percent supplementary leverage ratio as of fourth quarter 2013. If the enhanced supplementary leverage ratio standards had been in effect as of fourth quarter 2013, the updated CCAR data suggests that the lead subsidiary IDIs of covered BHCs that did not meet a 6 percent ratio would have needed to increase their tier 1 capital by about $38 billion to meet that ratio. The agencies believe that the affected covered BHCs and their subsidiary IDIs would be able to effectively manage their capital structures to meet the enhanced supplementary leverage ratio standards in the final rule by January 1, 2018. The agencies believe that this transition period should help to reduce any short-term consequences and allow covered organizations to adjust smoothly to the new supplementary leverage ratio standards.

I. Advanced Approaches Framework

The agencies sought comment on whether in light of the proposed enhanced supplementary leverage ratio standards and ongoing standardized risk-based capital floors, the agencies should consider, in some future regulatory action, simplifying or eliminating portions of the advanced approaches rule if they are unnecessary or duplicative. One commenter stated that mandatory application of the advanced approaches rule is based on an outdated size-based threshold, and that the agencies should review the thresholds for mandatory application of the advanced approaches risk-based capital rules and consider whether, in light of recently implemented reforms to the regulatory capital framework, the criteria remain appropriate or whether they should be refined given the purpose of those rules. Another commenter recommended delaying consideration of the proposed enhanced supplementary leverage ratio standards pending the review and completion of regulatory initiatives based on the BCBS's discussion paper entitled, *The regulatory framework: balancing risk sensitivity, simplicity and comparability.*[31]

The agencies are not proposing any changes to the advanced approaches rule in connection with the final rule. As with any aspect of the regulatory capital framework, the agencies will continue to evaluate the appropriateness of the requirements of the advanced approaches rule in light of this final rule and the ongoing evolution of the U.S. financial regulatory framework.

III. Description of the Final Rule

For the reasons discussed above, and consistent with the transition provisions set forth in subpart G of the 2013 revised capital rule, the agencies have decided to adopt the 2 percent leverage buffer for covered BHCs and the 6

[31] Available at *http://www.bis.org/publ/bcbs258.pdf.*

percent well-capitalized threshold for subsidiary IDIs of covered BHCs effective on January 1, 2018. The final rule implements the provisions in the 2013 NPR as proposed. Accordingly, the final rule applies to any U.S. top-tier BHC with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody and any advanced approaches IDI subsidiary of such BHCs.

As further discussed above, the agencies are proposing elsewhere in the **Federal Register** changes to the calculation of the supplementary leverage ratio that would amend the 2013 revised capital rule and change the basis for calculating the supplementary leverage ratio.

Under the final rule, a covered BHC that maintains a leverage buffer greater than 2 percent of its total leverage exposure is not subject to the rule's limitations on its distributions and discretionary bonus payments.[32] If the covered BHC maintains a leverage buffer of 2 percent or less, it is subject to increasingly stricter limitations on such payouts. An IDI that is a subsidiary of a covered BHC is required to satisfy a 6 percent supplementary leverage ratio to be considered well capitalized for PCA purposes. The leverage ratio PCA thresholds under the 2013 revised capital rule and this final rule are shown in Table 1.

TABLE 1—LEVERAGE RATIO PCA LEVELS

PCA category	Generally applicable leverage ratio (percent)	Supplementary leverage ratio for advanced approaches banking organizations (percent)	Supplementary leverage ratio for subsidiary IDIs of covered BHCs (percent)
Well Capitalized	≥5	Not applicable	≥6.
Adequately Capitalized	≥4	≥3	≥3.
Undercapitalized	<4	<3	<3.
Significantly Undercapitalized	<3	Not applicable	Not applicable.
Critically Undercapitalized	Tangible equity (defined as tier 1 capital plus non-tier 1 perpetual preferred stock) to Total Assets ≤2.	Not applicable	Not applicable.

Note: The supplementary leverage ratio includes many off-balance sheet exposures in its denominator; the generally applicable leverage ratio does not.

All advanced approaches banking organizations must calculate and begin reporting their supplementary leverage ratios beginning in the first quarter of 2015. However, the enhanced supplementary leverage ratio standards for covered organizations set forth in the final rule do not become effective until January 1, 2018.

IV. Regulatory Analysis

A. Paperwork Reduction Act (PRA)

There is no new collection of information pursuant to the PRA (44 U.S.C. 3501 *et seq.*) contained in this final rule. The agencies did not receive any comment on their PRA analysis.

B. Regulatory Flexibility Act Analysis

OCC

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Act analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $500 million or less) or to certify that the rule will not have a significant economic impact on a substantial number of small entities.

Using the SBA's size standards, as of December 31, 2013, the OCC supervised 1,195 small entities.[33]

As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, the final rule strengthens the supplementary leverage ratio standards for covered BHCs and their IDI subsidiaries. Because the final rule applies only to covered BHCs and their IDI subsidiaries, it does not impact any OCC-supervised small entities. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) requires an agency to provide a final regulatory flexibility analysis with a final rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA beginning on July 22, 2013, to include banks with assets less than or equal to $500 million)[34] and publish its analysis or a summary, or its certification and a short, explanatory statement, in the **Federal Register** along with the final rule.

The Board is providing a final regulatory flexibility analysis with respect to this final rule. As discussed above, this final rule is designed to enhance the safety and soundness of U.S. top-tier bank holding companies with at least $700 billion in consolidated assets or at least $10 trillion in assets under custody (covered BHCs), and the insured depository institution subsidiaries of covered BHCs. The Board received no public comments on the proposed rule from members of the general public or from the Chief Counsel for Advocacy of the Small Business Administration. Thus, no issues were raised in public comments relating to the Board's initial regulatory flexibility act analysis and no changes are being made in response to such comments.

Under regulations issued by the Small Business Administration, a small entity includes a depository institution or

[32] *See* section 11(a)(4) of the 2013 revised capital rule.

[33] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $500 million and $35.5 million, respectively. 78 FR 37409 (June 20, 2013). Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity. The OCC used December 31, 2013, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[34] *See* 13 CFR 121.201. Effective July 22, 2013, the Small Business Administration revised the size standards for banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

bank holding company with total assets of $500 million or less (a small banking organization). As of December 31, 2013, there were 627 small state member banks. As of December 31, 2013, there were approximately 3,676 small bank holding companies. No small top-tier bank holding company would meet the threshold provided in the final rule, so there would be no additional projected compliance requirements imposed on small bank holding companies. One covered bank holding company has one small state member bank subsidiary, which would be covered by the final rule. The Board expects that any small banking organization covered by the final rule would rely on its parent banking organization for compliance and would not bear additional costs.

The Board believes that the final rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the final rule that would reduce the economic impact on small banking organizations supervised by the Board.

FDIC

The RFA requires an agency to provide an FRFA with a final rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $500 million or less).[35]

As described in sections I and III of this preamble, the final rule strengthens the supplementary leverage ratio standards for covered BHCs and their advanced approaches IDI subsidiaries. As of December 31, 2013, 1 (out of 3,394) small state nonmember bank and no (out of 303) small state savings associations were advanced approaches IDI subsidiaries of a covered BHC. Therefore, the FDIC does not believe that the final rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the final rule does not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Reform Act) provides that an agency that is subject to the Unfunded Mandates Act must prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted for inflation) or more in any one year. The current inflation-adjusted expenditure threshold is $141 million. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $141 million or more. The OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. When the final rule is published in the **Federal Register**, the full text of the OCC's analyses will available at: *http://www.regulations.gov,* Docket ID OCC–2013–0008.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner. The agencies did not receive any comment on their use of plain language.

List of Subjects

12 CFR Part 6

National banks.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

[35] Effective July 22, 2013, the SBA revised the size standards for banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 93a, 1831o, and 5412(b)(2)(B), the Office of the Comptroller of the Currency amends part 6 of chapter I of title 12, Code of Federal Regulations as follows:

PART 6—PROMPT CORRECTIVE ACTION

■ 1. The authority citation for part 6 continues to read as follows:

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

■ 2. Amend § 6.4 by revising paragraph (c)(1)(iv) to read as follows:

§ 6.4 Capital measures and capital category definition.

* * * * *

(c) * * *

(1) * * *

(iv) Leverage Measure:

(A) The national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(B) With respect to a national bank or Federal savings association that is a subsidiary of a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Y–15), on January 1, 2018 and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 6.0 percent or greater; and

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 3. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3905–3909, and 5371; 15 U.S.C. 78b, 78I(b), 78l(i), 780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 4. In § 208.41, redesignate paragraphs (c) through (j) as paragraphs (d) through (k), and add a new paragraph (c) to read as follows:

§ 208.41 Definitions for purposes of this subpart.

* * * * *

(c) *Covered BHC* means a covered BHC as defined in § 217.2 of Regulation Q (12 CFR 217.2).

* * * * *

■ 5. Amend § 208.43 as follows:

■ a. Add paragraph (a)(2)(iv)(C).

■ b. Revise paragraph (c)(1)(iv).

§ 208.43 Capital measures and capital category definitions.

(a) * * *

(2) * * *

(iv) * * *

(C) With respect to any bank that is a subsidiary (as defined in § 217.2 of Regulation Q (12 CFR 217.2)) of a covered BHC, on January 1, 2018, and thereafter, the supplementary leverage ratio.

* * * * *

(c) * * *

(1) * * *

(iv) Leverage Measure:

(A) The bank has a leverage ratio of 5.0 percent or greater; and

(B) Beginning on January 1, 2018, with respect to any bank that is a subsidiary of a covered BHC under the definition of ''subsidiary'' in section 217.2 of Regulation Q (12 CFR 217.2), the bank has a supplementary leverage ratio of 6.0 percent or greater; and

* * * * *

PART 217—CAPITAL ADEQUACY OF BOARD-REGULATED INSTITUTIONS

■ 6. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 7. Amend § 217.1 by revising paragraph (f)(4) to read as follows:

§ 217.1 Purpose, applicability, reservations of authority, and timing.

* * * * *

(f) * * *

(4) Beginning January 1, 2018, a covered BHC (as defined in § 217.2) is subject to limitations on distributions and discretionary bonus payments in accordance with the lower of the maximum payout amount as determined under § 217.11(a)(2)(iii) and the maximum leverage payout amount as determined under § 217.11(a)(2)(vi).

■ 8. In § 217.2 add a definition of ''covered BHC'' in alphabetical order to read as follows:

§ 217.2 Definitions.

* * * * *

Covered BHC means a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statements for Holding Companies (FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y–15).

* * * * *

■ 9. In § 217.11

■ A. Add new paragraphs (a)(2)(v) and (a)(2)(vi), and (c);

■ B. Revise paragraph (a)(4); and

■ C. Add Table 2 to read as follows.

§ 217.11 Capital conservation buffer and countercyclical capital buffer amount.

(a) * * *

(2) * * *

(v) *Maximum leverage payout ratio.* The maximum leverage payout ratio is the percentage of eligible retained income that a covered BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum leverage payout ratio is based on the covered BHC's leverage buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 2 of this section.

(vi) *Maximum leverage payout amount.* A covered BHC's maximum leverage payout amount for the current calendar quarter is equal to the covered BHC's eligible retained income, multiplied by the applicable maximum leverage payout ratio, as set forth in Table 2 of this section.

* * * * *

(4) *Limits on distributions and discretionary bonus payments.* (i) A Board-regulated institution shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum payout amount or, as applicable, the maximum leverage payout amount.

(ii) A Board-regulated institution that has a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer, in accordance with paragraph (b) of this section, and, if applicable, that has a leverage buffer that is greater than 2.0 percent, in accordance with paragraph (c) of this section, is not subject to a maximum payout amount or maximum leverage payout amount under this section.

(iii) *Negative eligible retained income.* Except as provided in paragraph (a)(4)(iv) of this section, a Board-regulated institution may not make distributions or discretionary bonus payments during the current calendar quarter if the Board-regulated institution's:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent, or, if applicable, leverage buffer was less than 2.0 percent, as of the end of the previous calendar quarter.

* * * * *

(c) *Leverage buffer*—(1) *General.* A covered BHC is subject to the lower of the maximum payout amount as determined under paragraph (a)(2)(iii) of this section and the maximum leverage payout amount as determined under paragraph (a)(2)(vi) of this section.

(2) *Composition of the leverage buffer.* The leverage buffer is composed solely of tier 1 capital.

(3) *Calculation of the leverage buffer.* (i) A covered BHC's leverage buffer is equal to the covered BHC's supplementary leverage ratio minus 3 percent, calculated as of the last day of the previous calendar quarter based on the covered BHC's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C).

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the covered BHC's supplementary leverage ratio is less than or equal to 3 percent, the covered BHC's leverage buffer is zero.

TABLE 2 TO § 217.11—CALCULATION OF MAXIMUM LEVERAGE PAYOUT AMOUNT

Leverage buffer	Maximum leverage payout ratio (as a percentage of eligible retained income)
Greater than 2.0 percent	No payout ratio limitation applies.
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent.
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent.
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent.
Less than or equal to 0.5 percent	0 percent.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation is amending part 324 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

■ 10. The authority section for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 11. Revise § 324.403(b)(1)(v) to read as follows:

§ 324.403 Capital measures and capital category definitions.

* * * * *

(b) * * *

(1) * * *

(v) Beginning on January 1, 2018 and thereafter, an FDIC-supervised institution that is a subsidiary of a covered BHC will be deemed to be well capitalized if the FDIC-supervised institution satisfies paragraphs (b)(1)(i) through (iv) of this section and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph, a covered BHC means a U.S. top-tier bank holding company with more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y–15); and

* * * * *

Dated: April 8, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 10, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 8th day of April, 2014.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2014–09367 Filed 4–30–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1160; Directorate Identifier 2010–NM–148–AD; Amendment 39–17698; AD 2013–25–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2000–11–06 for certain The Boeing Company Model 767 airplanes. AD 2000–11–06 required repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary. This new AD requires reducing the initial compliance time and repetitive inspection interval in AD 2000–11–06; mandates a terminating action for the repetitive inspections to eliminate wire damage; removes certain airplanes from the applicability; and requires revising the maintenance program to incorporate changes to the airworthiness limitations section. This AD was prompted by fleet information indicating that the repetitive inspection interval in AD 2000–11–06 is too long, because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. We are issuing this AD to detect and correct chafing of the fuel pump wire insulation and consequent exposure of the electrical conductor, which could result in electrical arcing between the wires and conduit and consequent fire or explosion of the fuel tank.

DATES: This AD is effective June 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 5, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2010–1160; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the

Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a second supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)). AD 2000–11–06 applied to certain The Boeing Company Model 767 airplanes. The second SNPRM published in the **Federal Register** on March 8, 2013 (78 FR 14934). We preceded the second SNPRM with a first SNPRM that published in the **Federal Register** on July 2, 2012 (77 FR 39188). We preceded the first SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on December 14, 2010 (75 FR 77790). The NPRM was prompted by fleet information indicating that the repetitive inspection interval in AD 2000–11–06 is too long, because excessive chafing of the sleeving continues to occur much earlier than expected between scheduled inspections. The NPRM proposed to continue to require repetitive inspections to detect discrepancies of the wiring and surrounding Teflon sleeves of the fuel tank boost pumps and override/jettison pumps; replacement of the sleeves with new sleeves, for certain airplanes; and repair or replacement of the wiring and sleeves with new parts, as necessary. The NPRM also proposed to reduce the initial compliance time and repetitive inspection interval in AD 2000–11–06. The first SNPRM proposed to mandate a terminating action for the repetitive inspections, to eliminate wire damage. In addition, the first SNPRM proposed to remove certain airplanes from the applicability of AD 2000–11–06. The second SNPRM proposed to require revising the maintenance program to incorporate changes to the airworthiness limitations section. We are issuing this AD to detect and correct chafing of the fuel pump wire insulation and consequent exposure of the electrical conductor, which could result in electrical arcing between the wires and conduit and consequent fire or explosion of the fuel tank.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the second SNPRM (78 FR 14934, March 8, 2013) and the FAA's response to each comment. Boeing concurred with the content of the second SNPRM.

Request To Allow Using Maintenance Manual Procedure for Repetitive Inspections

United Airlines (UAL) asked that paragraphs (g), (i)(2)(i)(C), (i)(2)(ii), and (k) of the second SNPRM (78 FR 14934, March 8, 2013) be changed to allow the use of Boeing 767 Airplane Maintenance Manual (AMM) 28–22–15/601 when accomplishing the repetitive inspections required by those paragraphs. UAL stated that Boeing has incorporated the intent of Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, into Boeing 767 AMM 28–22–15/601. (Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, was cited as an appropriate source of service information in the second SNPRM.)

We do not agree to change paragraphs (g), (i)(2)(i)(C), (i)(2)(ii), and (k) of this final rule to allow using Boeing 767 AMM 28–22–15/601 for accomplishing the required repetitive inspections. The procedures specified in that section of the AMM are not FAA-approved. In addition, it is possible that not all operators have a current version of the AMM in their maintenance programs; therefore, it is not possible for us to know which version of the AMM would be used for doing the inspections. Limiting the requirements to a specific AMM procedure and revision level would require an operator to get an approval of an alternative method of compliance (AMOC) for subsequent AMM revisions. Therefore, we have not changed this final rule in this regard.

Request To Clarify Certain Errors in the Service Information

UAL asked that the second SNPRM (78 FR 14934, March 8, 2013) refer to the correct figure callouts (which are identified incorrectly in Boeing Alert Service Bulletin 767–28A0104, Revision 1, dated March 2, 2012). UAL stated that paragraph (l) of the second SNPRM specifies using Boeing Alert Service Bulletin 767–28A0104, Revision 1, dated March 2, 2012, to perform terminating action for the repetitive inspections required by paragraphs (g) and (k) of the second SNPRM. UAL also noted that it made the same request in its comments on the first SNPRM (77 FR 39188, July 2, 1012). UAL added that these errors were confirmed by Boeing, but no revised service information has been issued to address these errors.

We agree with the commenter that the figure callouts are identified incorrectly in Boeing Alert Service Bulletin 767–28A0104, Revision 1, dated March 2, 2012; however, as we specified in a similar response in the first SNPRM (77 FR 39188, July 2, 2012), Boeing has not yet issued revised service information to correct the errors. These errors are minor and do not affect accomplishing the actions specified in the service information. When revised service information is issued, operators may request approval of an AMOC in accordance with the procedures specified in paragraph (p) of this AD. We have not changed this final rule in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the second SNPRM (78 FR 14934, March 8, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the second SNPRM (78 FR 14934, March 8, 2013).

Costs of Compliance

We estimate that this AD affects 414 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Actions for airplanes with jettison pumps [retained from AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)).	7 work-hours × $85 per hour = $595 per inspection cycle.	None	$595 per inspection cycle.	Up to $246,330 per inspection cycle.
Actions for airplanes without jettison pumps [retained from AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)).	5 work-hours × $85 per hour = $425 per inspection cycle.	None	$425 per inspection cycle.	Up to $175,950 per inspection cycle.
New replacement of wire bundles	42 work–hours × $85 per hour = $3,570.	$6,061	$9,631	$3,987,234.
New revision to maintenance program	1 work-hour × $85 per hour = $85.	None	$85	$35,190.

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of wire bundle sleeves	1 work-hour × $85 per hour = $85	$1,452	$1,537

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) 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)), and adding the following new AD:

2013–25–02 The Boeing Company: Amendment 39–17698; Docket No. FAA–2010–1160; Directorate Identifier 2010–NM–148–AD.

(a) Effective Date

This AD is effective June 5, 2014.

(b) Affected ADs

This AD supersedes AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)).

(c) Applicability

(1) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, as identified in Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (p) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by fleet information indicating that the repetitive inspection interval in AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)) is too long because excessive chafing of the sleeving continues to occur much

earlier than expected between scheduled inspections. We are issuing this AD to detect and correct chafing of the fuel pump wire insulation and consequent exposure of the electrical conductor, which could result in electrical arcing between the wires and conduit and consequent fire or explosion of the fuel tank.

(f) Compliance

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

(g) Retained Repetitive Inspections

This paragraph restates the requirements of paragraph (a) of AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)), with revised service information. Perform a detailed visual inspection to detect discrepancies—including the presence of cuts, splits, holes, worn areas, and lacing ties installed on the outside of the sleeves (except at the sleeve ends)—of the Teflon sleeves surrounding the wiring of the fuel tank boost pumps and override/jettison pumps, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. Repeat the inspection thereafter at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(1) Prior to the accumulation of 50,000 total flight hours, or within 90 days after July 6, 2000 (the effective date of AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)), whichever occurs later.

(2) Within 18 months after July 6, 2000 (the effective date of AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)).

(h) Retained Corrective Actions

This paragraph restates the requirements of paragraph (b) of AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)), with revised service information. If any discrepancy is detected during any inspection required by paragraph (g) of this AD: Prior to further flight, remove the Teflon sleeves and perform a detailed visual inspection to detect damage of the wiring, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(1) If no damage to the wiring is detected, prior to further flight, install new Teflon sleeves, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(2) If any damage to the wiring is detected, prior to further flight, accomplish the requirements of paragraph (i) of this AD.

(i) Retained Corrective Actions

This paragraph restates the requirements of paragraph (c) of AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)), with revised service information. If any damage to the wiring is detected during any inspection required by paragraph (h) of this AD: Prior to further flight, perform a detailed visual inspection to determine if the wiring damage was caused by arcing, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(1) If the wire damage was not caused by arcing: Prior to further flight, repair any damaged wires or replace the wires with new or serviceable wires, as applicable, and install new Teflon sleeves, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(2) If any damage caused by arcing is found: Prior to further flight, perform an inspection for signs of fuel inside the conduit or on the wires, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(i) If no sign of fuel is found, accomplish the actions specified in paragraphs (i)(2)(i)(A), (i)(2)(i)(B), (i)(2)(i)(C), and (i)(2)(i)(D) of this AD.

(A) Prior to further flight, repair the wires or replace the wires with new or serviceable wires, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(B) Prior to further flight, install new Teflon sleeves, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(C) Repeat the inspection for signs of fuel inside the conduit thereafter at intervals not to exceed 500 flight hours, until the requirements of paragraph (i)(2)(i)(D) of this AD have been accomplished. If any fuel is found inside the conduit during any inspection required by this paragraph, prior to further flight, replace the conduit with a new or serviceable conduit, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. Thereafter, repeat the inspection specified in paragraph (g) of this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(D) Within 6,000 flight hours or 18 months after the initial fuel inspection specified by paragraph (i)(2) of this AD, whichever occurs first, replace the conduit with a new or serviceable conduit, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. Such conduit replacement constitutes terminating action for the repetitive fuel inspections required by paragraph (i)(2)(i)(C) of this AD. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(ii) If any fuel is found in the conduit or on any wire: Prior to further flight, replace the conduit with a new or serviceable conduit, replace damaged wires with new or serviceable wires, and install new Teflon sleeves; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1,

dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. Thereafter, repeat the inspection specified in paragraph (g) of this AD at intervals not to exceed 60,000 flight hours or 30,000 flight cycles, whichever occurs first. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(j) Retained Pump Retest

This paragraph restates the requirements of paragraph (d) of AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)), with revised service information. For any wire bundle removed and reinstalled during any inspection required by this AD: Prior to further flight after such reinstallation, retest the fuel pump, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 1, dated August 5, 1999; Boeing Alert Service Bulletin 767–28A0053, Revision 2, dated June 24, 2010; or Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. As of the effective date of this AD, only Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011, may be used to do the actions required by this paragraph.

(k) New Repetitive Inspections With Reduced Inspection Intervals

Do the inspection required by paragraph (g) of this AD at the time specified in paragraph (k)(1) or (k)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011. Repeat the inspection thereafter at intervals not to exceed 15,000 flight hours. Accomplishing the first inspection in this paragraph ends the repetitive inspection requirements in paragraph (g) of this AD.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has been done as of the effective date of this AD: Do the inspection within 15,000 flight hours after the most recent inspection, or within 6,000 flight hours after the effective date of this AD, whichever occurs later, but not to exceed 60,000 flight hours after the most recent inspection required by paragraph (g) of this AD.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has not been done as of the effective date of this AD: Do the inspection before the accumulation of 15,000 total flight hours, or within 6,000 flight hours after the effective date of this AD, whichever occurs later.

(l) New Terminating Action

Within 60 months after the effective date of this AD: Replace the fuel boost pump and override/jettison pump wire bundles inside the in-tank electrical conduit with a conduit liner and new wire bundles, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0104, Revision 1, dated March 2, 2012. Accomplishing the replacement specified in this paragraph ends the repetitive inspection requirements in paragraphs (g) and (k) of this AD.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–28A0104, dated January 25, 2011, which is not incorporated by reference in this AD.

(n) New Maintenance Program Revision

Within 180 days after the effective date of this AD: Revise the maintenance program to incorporate Critical Design Configuration Control Limitations (CDCCL) Task 28–AWL–29, ''In-Tank AC Fuel Pump Wire Bundles with Protective Liner;'' and CDCCL Task 28–AWL–30, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank;'' of Section 9, of Boeing 767 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision October 2012.

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

After accomplishing the revision required by paragraph (n) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (p) of this AD.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (q)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) AMOCs approved previously for AD 2000–11–06, Amendment 39–11754 (65 FR 34928, June 1, 2000; corrected August 1, 2000 (65 FR 46862)), are approved as AMOCs for the corresponding provisions of this AD. Compliance time extensions approved previously for AD 2000–11–06 are not approved as AMOCs for the compliance times required by paragraph (k) of this AD.

(q) Related Information

(1) For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference in this AD may be obtained at the addresses specified in paragraphs (r)(4) and (r)(5) of this AD.

(r) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on June 5, 2014.

(i) Boeing Service Bulletin 767–28A0053, Revision 3, dated November 11, 2011.

(ii) Boeing Alert Service Bulletin 767–28A0104, Revision 1, dated March 2, 2012.

(iii) Section 9, of Boeing 767 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Revision October 2012:

(A) Critical Design Configuration Control Limitations (CDCCL) Task 28–AWL–29, ''In-Tank AC Fuel Pump Wire Bundles with Protective Liner;''

(B) CDCCL Task 28–AWL–30, ''Fuel Boost Pump Wires in Conduit Installation—In Fuel Tank.''

Note 1 to paragraph (r)(3)(iii) of this AD: CDCCL Task 28–AWL–29 and Task 28–AWL–30 were not revised in Revision October 2012 of Section 9, of Boeing 767 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9. These tasks were added in Revision May 2010; therefore, the page date for these tasks is May 2010.

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

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

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

Issued in Renton, Washington, on December 4, 2013.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–09094 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0616; Directorate Identifier 2007–NM–353–AD; Amendment 39–17833; AD 2014–08–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 767 airplanes. This AD was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. This AD requires revising the maintenance program to incorporate a revision to the Airworthiness Limitations section of the maintenance planning data document. We are issuing this AD to detect and correct failure of the engine fuel suction feed capability of the fuel system, which could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

DATES: This AD is effective June 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 5, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5280; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2008–0616; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 767 airplanes. The SNPRM published in the **Federal Register** on August 1, 2013 (78 FR 46532). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on June 6, 2008 (73 FR 32252). The NPRM proposed to require repetitive operational tests of the engine fuel suction feed of the fuel system, and other related testing if necessary. The NPRM was prompted by reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. Although the fuel system on Model 767 airplanes differs from the Model 737 with respect to the engine fuel feed system design, service data of transport category airplanes indicates that multi-engine flameouts have generally resulted from a common cause, such as fuel mismanagement, crew action that inadvertently shut off the fuel supply to the engines, exposure to common environmental conditions, or engine deterioration on all engines of the same type. Successful in-flight restart of the engines is dependent on adequate fuel being supplied to the engines, solely through engine fuel suction feed. Deterioration of the fuel plumbing system can lead to line (vacuum) losses, reducing the engine fuel suction feed capability; therefore, directed maintenance is necessary to ensure this system is functioning correctly in order to maintain continued safe flight of the airplane. The SNPRM proposed to revise the maintenance program to incorporate a revision to the Airworthiness Limitations section of the maintenance planning data (MPD) document, and to remove airplanes from the applicability. We are issuing this AD to detect and correct failure of the engine fuel suction feed capability of the fuel system, which could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM (78 FR 46532, August 1, 2013) and the FAA's response to each comment.

Concurrence With the SNPRM (78 FR 46532, August 1, 2013)

Boeing stated that it concurs with the content of the SNPRM (78 FR 46532, August 1, 2013).

Request To Include Compliance Time for Initial Operational Test

United Airlines (UAL) and UPS asked that we specify the compliance time for the initial operational test identified in the maintenance program. UAL and UPS presumed that the initial test is within 7,500 flight hours or 3 years, whichever occurs first ''after the effective date of the AD.''

We acknowledge the commenters' request. The compliance time for the initial operational test is based on the date the airworthiness limitation (AWL) is incorporated into the maintenance program. It would be conservative to use the effective date of this AD for accomplishing the initial test; however, this AD allows 90 days for the AWL to be incorporated. As specified in paragraph (g) of this AD, the initial test is to be done within 7,500 flight hours or 3 years, whichever occurs first after incorporation of the AWL into the maintenance program. We have not revised this final rule in this regard.

Request To Include Latest MPD Revision

UAL asked that we include the latest revision of Section 9 of the Boeing 767 MPD in the SNPRM (78 FR 46532, August 1, 2013). UAL stated that the latest revision is April 2013.

We agree that this AD should refer to the latest MPD revision. Boeing has issued Revisions April 2013, August 2013, September 2013, and November 2013 of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, of the Boeing 767 MPD Document. We have added these revisions to paragraph (g) of this final rule as additional service information

that may be used to accomplish the required actions.

Request To Include Credit for Initial Test Using Existing Inspection Programs

UPS asked that we give credit for previous accomplishment of the initial operational test. UPS stated that it has already incorporated the initial test as an existing scheduled maintenance task at its ''1C interval (24 months or 6,000 flight hours, whichever occurs first), in accordance with MSM SDN 28–22–00–5GT.'' UPS added that the interval to incorporate AWL No. 28–AWL–101 is 3 years or 7,500 flight hours, whichever occurs first. UPS noted that the SNPRM (78 FR 46532, August 1, 2013) fails to provide an option to take credit for the last accomplishment of the test.

We do not agree with the commenter's request to give credit for previous accomplishment of testing of the suction feed capability under the current maintenance program. The commenter did not provide sufficient information with their comment to allow us to determine that their previous tests had the same level of effectiveness as the AWL-required test. In addition, the repetitive interval in the AWL is 3 years or 7,500 flight hours, and the initial inspection is to be done no later than 3 years or 7,500 flight hours after the AWL is incorporated into the maintenance program. The commenter stated that it currently performs its scheduled maintenance task every 24 months or 6,000 flight hours, whichever occurs first. If the commenter performs the next scheduled suction feed test using the procedures required by the AWL, without changing their currently planned time for the next inspection, it would be in compliance with the new AWL and credit for a previous test would not be necessary. Under the provisions of paragraph (i) of this AD, we may consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that the current test method can be used in place of the test method required by the AWL, and provides an acceptable level of safety. We have made no change to this final rule in this regard.

Request To Change Applicability Language

UPS asked that we change the applicability language specified in paragraph (c) of the SNPRM (78 FR 46532, August 1, 2013), which specifies the affected models have received a certificate of airworthiness or foreign export certificate of airworthiness before November 2, 2012. UPS recommended that the language be changed to capture any Model 767 airplanes subject to the requirements of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, including AWL No. 28–AWL–101, Engine Fuel Suction Feed Operational Test, of Section D., Airworthiness Limitations—Systems, as of November 2, 2012 (the original publication date) of the Boeing 767 MPD Document. UPS stated that the applicability range specified in paragraph (c) of the SNPRM does not include eight additional Model 767–300F airplanes currently operated by UPS that were delivered after November 2, 2012.

We do not agree to change the applicability language to capture Model 767 airplanes per the commenter's request. The intent of the cutoff date of November 2, 2012, as specified in the applicability of this AD, is to require a common operational test to apply to both the in-production and previously delivered airplanes. Production airplanes delivered after November 2, 2012, already receive a maintenance program that includes this operational test. Operators are required to comply with the AWLs in the documents provided with a new airplane. This AD would capture airplanes outside that group. However, we have included a clarification in paragraph (c) of this final rule to specify that the AD applies to airplanes with an original airworthiness certificate or original export certificate of airworthiness issued before November 2, 2012.

Clarification of Paragraph (h) of This AD

We have revised paragraph (h) of this AD by removing the reference to the critical design configuration control limitations (CDCCLs). AWL No. 28–AWL–101 is not a CDCCL.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 406 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise airworthiness limitations	1 work-hour × $85 per hour = $85	$0	$85	$34,510

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–08–09 The Boeing Company: Amendment 39–17833; Docket No. FAA–2008–0616; Directorate Identifier 2007–NM–353–AD.

(a) Effective Date

This AD is effective June 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, that have received an original airworthiness certificate or original export certificate of airworthiness issued before November 2, 2012.

Note 1 to paragraph (c) of this AD: November 2, 2012, is the original publication date of Revision October 2012 of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, including AWL No. 28–AWL–101, Engine Fuel Suction Feed Operational Test, of the Boeing 767 Maintenance Planning Data (MPD) Document.

(d) Subject

Joint Aircraft System Component (JASC) Code 2800, Aircraft Fuel System.

(e) Unsafe Condition

This AD results from reports of two in-service occurrences on Model 737–400 airplanes of total loss of boost pump pressure of the fuel feed system, followed by loss of fuel system suction feed capability on one engine, and in-flight shutdown of the engine. We are issuing this AD to detect and correct failure of the engine fuel suction feed capability of the fuel system, which could result in dual engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

(f) Compliance

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

(g) Maintenance Program Revision

Within 90 days after the effective date of this AD: Revise the maintenance program to incorporate AWL No. 28–AWL–101, Engine Fuel Suction Feed Operational Test, of Section D., Airworthiness Limitations—Systems, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision October 2012, January 2013, April 2013, August 2013, September 2013, or November 2013 of the Boeing 767 MPD Document. The initial compliance time for the test is within 7,500 flight hours or 3 years, whichever occurs first after incorporation of the AWL into the maintenance program.

(h) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., tests) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, 1601 Lind Avenue SW., Renton, WA 98057–3352; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision October 2012, of the Boeing 767 Maintenance Planning Data (MPD) Document.

(ii) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision January 2013, of the Boeing 767 MPD Document.

(iii) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision April 2013, of the Boeing 767 MPD Document.

(iv) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision August 2013, of the Boeing 767 MPD Document.

(v) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision September 2013, of the Boeing 767 MPD Document.

(vi) Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision November 2013, of the Boeing 767 MPD Document.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5280; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on April 14, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–09239 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0864; Directorate Identifier 2013–NM–108–AD; Amendment 39–17841; AD 2014–09–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain

The Boeing Company Model 777F series airplanes. This AD was prompted by a report of a fire that originated near the first officer's seat and caused extensive damage to the flight deck. This AD requires replacing the low-pressure oxygen hoses with non-conductive low-pressure oxygen hoses in the stowage box and supernumerary ceiling area. We are issuing this AD to prevent electrical current from passing through an internal, anti-collapse spring of the low-pressure oxygen hose, which can cause the low-pressure oxygen hose to melt or burn and lead to an oxygen-fed fire near the flight deck.

DATES: This AD is effective June 5, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 5, 2014.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0864; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777F series airplanes. The NPRM published in the **Federal Register** on October 23, 2013 (78 FR 63130). The NPRM proposed to require replacing the low-pressure oxygen hoses with non-conductive low-pressure oxygen hoses in the stowage box and supernumerary ceiling area in order to prevent electrical current from passing through an internal, anti-collapse spring of the low-pressure oxygen hose, which can cause the low-pressure oxygen hose to melt or burn and lead to an oxygen-fed fire near the flight deck.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 63130, October 23, 2013) and the FAA's response to each comment.

Support for the NPRM (78 FR 63130, October 23, 2013)

The National Transportation Safety Board, The Air Line Pilots Association International (ALPA), and Alex Naife expressed support for the NPRM (78 FR 63130, October 23, 2013).

Request To Shorten Compliance Time

ALPA recommended that we reduce the 36-month compliance time to replace the low-pressure oxygen hoses to 12 months because of the impact that an oxygen-fed fire on the flight deck would have on flight safety.

We do not agree with the commenter's request to reduce the compliance time. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacing the low-pressure oxygen hoses with non-conductive low-pressure oxygen hoses. In consideration of all of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the low-pressure oxygen hoses can be replaced in a timely manner within the fleet, while still maintaining an adequate level of safety.

Also, reducing the compliance time of the NPRM (78 FR 63130, October 23, 2013) would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments subsequently received, and eventually issuing a final rule. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original notice, we have determined that further delay of this final rule is not appropriate.

Operators are permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to replace the low-pressure oxygen hoses before 36 months after the effective date of this final rule. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue. We have not changed this final rule in this regard.

Request for Credit for Previous Actions

FedEx requested that accomplishment of the actions described in Boeing Alert Service Bulletin 777–35A0029, dated June 6, 2012, be considered as an acceptable means of compliance with the final rule. (The NPRM (78 FR 63130, October 23, 2013) specifies using Boeing Alert Service Bulletin 777–35A0029, Revision 1, dated April 29, 2013.) FedEx commented that Boeing Alert Service Bulletin 777–35A0029, Revision 1, dated April 29, 2013, on page 12, indicates that no more work is required for airplanes on which the defective hoses were removed, as described in Boeing Alert Service Bulletin 777–35A0029, dated June 6, 2012. FedEx stated that it has already accomplished the modification on 5 of its 18 applicable airplanes, as described in Boeing Alert Service Bulletin 777–35A0029, dated June 6, 2012.

We partially agree with the commenter. We agree because the commenter indicated that the unsafe condition has already been removed on several of its airplanes. However, paragraph (i) of the NPRM (78 FR 63130, October 23, 2013), and this final rule specifies credit for replacing the defective hoses before the effective date of this final rule using Boeing Alert Service Bulletin 777–35A0029, dated June 6, 2012. Therefore, no changes are necessary to this final rule in this regard.

Change Made to This Final Rule

We have revised the unsafe condition statement in the SUMMARY, the Discussion, and paragraph (e) of this final rule to clarify that the unsafe condition is near the flight deck, rather than on the flight deck.

Conclusion

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

with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 63130, October 23, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 63130, October 23, 2013).

Costs of Compliance

We estimate that this AD affects 18 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace oxygen hoses	7 work-hours × $85 per hour = $595	$1,450	$2,045	$36,810

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–09–06 The Boeing Company: Amendment 39–17841; Docket No. FAA–2013–0864; Directorate Identifier 2013–NM–108–AD.

(a) Effective Date

This AD is effective June 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–35A0029, Revision 1, dated April 29, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report of a fire that originated near the first officer's seat and caused extensive damage to the flight deck. We are issuing this AD to prevent electrical current from passing through an internal, anti-collapse spring of the low-pressure oxygen hose, which can cause the low-pressure oxygen hose to melt or burn and lead to an oxygen-fed fire near the flight deck.

(f) Compliance

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

(g) Oxygen Hose Replacement

Within 36 months after the effective date of this AD: Replace the low-pressure oxygen hoses in the stowage box and supernumerary ceiling area with new, non-conductive, low-pressure oxygen hoses, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–35A0029, Revision 1, dated April 29, 2013.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install a low-pressure oxygen hose, part number (P/N) 57034–08A050140, P/N 57034–08A050215, or P/N 57034–09A050270, on any airplane.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–35A0029, dated June 6, 2012, provided that the low-pressure oxygen hoses described in Boeing Alert Service Bulletin 777–35A0029, Revision 1, dated April 29, 2013, were replaced with new, non-conductive, low-pressure oxygen hoses. Boeing Alert Service Bulletin 777–35A0029, dated June 6, 2012, is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Susan L. Monroe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6457; fax: 425–917–6590; email: *susan.l.monroe@faa.gov.*

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

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 777–35A0029, Revision 1, dated April 29, 2013.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on April 17, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–09413 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0943; Directorate Identifier 2013–SW–001–AD; Amendment 39–17836; AD 2014–09–01]

RIN 2120–AA64

Airworthiness Directives; AgustaWestland S.p.A. (Type Certificate Previously Held by Agusta S.p.A.) (Agusta) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta Model A109C, A109E, A109K2, and A119 helicopters. This AD requires a recurring visual inspection of the tail rotor (T/R) blade retaining bolts (bolts) for a crack, corrosion, damage, or missing cadmium plating in the central part of the bolt and, depending on findings, a liquid penetrant inspection. This AD also requires replacing a cracked or damaged bolt. This AD was prompted by two reported incidents of cracked bolts. The actions of this AD are intended to detect an unairworthy bolt and prevent failure of a bolt, release of a T/R blade, and subsequent loss of control of the helicopter.

DATES: This AD is effective June 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of June 5, 2014.

ADDRESSES: For service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On November 20, 2013, at 78 FR 69595, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain Agusta Model A109C, A109E, A109K2, and A119 helicopters. The NPRM proposed to require a recurring visual inspection of each bolt, part number (P/N) 109–8131–09–1, for a crack, corrosion, a nick, other damage, or missing cadmium plating in the central part of the bolt. If a crack is not detected by the visual inspection, the NPRM proposed to require a liquid penetrant inspection. If there is a crack, corrosion, damage, or missing cadmium plating in the central part of the bolt, the NPRM proposed to require replacing the bolt before further flight. The NPRM also proposed to prohibit installing certain bolts on any helicopter unless it has passed the proposed inspections. The proposed requirements were intended to detect an unairworthy bolt and prevent failure of a bolt, release of a T/R blade, and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2013–0009, dated January 11, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Agusta Model A109C, A109K2, A109E, and A119 helicopters, all serial numbers. EASA advises that cracks were reported in bolts, P/N 109–8131–09–1, installed on a Model A109K2 and a Model A109E helicopter. EASA further states that investigations conducted by Agusta revealed the cracks were in the same area of the bolts and corresponded with corrosion pits. EASA specified that this condition, if not detected and corrected, could cause damage to, or loss of, a T/R blade, possibly resulting in loss of control of the helicopter.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 69595, November 20, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Interim Action

We consider this AD to be an interim action. If final action is later identified, we might consider additional rulemaking.

Related Service Information

AgustaWestland issued Bollettino Tecnico (BT) No. 109–135 for Model A109C helicopters, BT No. 109EP–125 for Model A109E helicopters, BT No. 109K–55 for Model A109K2 helicopters, and BT No. 119–052 for Model A119 helicopters. All of the BTs are dated December 19, 2012. The BTs specify to perform a visual inspection of bolt, P/N 109–8131–09–1, in accordance with the maintenance manual applicable to the model helicopter for condition, corrosion, and nicks. The BTs specify replacement of the bolt if there is any damage, even if minor, or if there is missing cadmium plating in the central part of the bolt. The BTs state that if a crack is not revealed from the visual inspection, then to perform a liquid penetrant inspection. The BTs further specify repeating the visual inspection of the bolts at intervals specific to the model helicopter. The BTs state the results of the inspections must be communicated to AgustaWestland.

Costs of Compliance

We estimate this AD affects 132 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. We estimate it will take 2 work-hours to perform the initial visual and liquid penetrant inspections and 1 work-hour to perform each recurring visual inspection at an average labor cost of $85 per work-hour. Based on these figures, it will cost about $170 to perform the initial inspections and about $85 to perform each recurring visual inspection. A replacement bolt will cost approximately $1,067; no additional labor cost is expected for replacement.

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 helicopters identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–09–01 AgustWestland S.p.A. (Type Certificate Previously Held by Agusta S.p.A) (Agusta) Helicopters: Amendment 39–17836; Docket No. FAA–2013–0943; Directorate Identifier 2013–SW–001–AD.

(a) Applicability

This AD applies to Agusta Model A109C, A109E, A109K2, and A119 helicopters with a tail rotor blade retaining bolt (bolt), part number 109–8131–09–1, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a bolt. This condition could result in failure of a bolt, release of a tail rotor blade, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective June 5, 2014.

(d) Compliance

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

(e) Required Actions

For each bolt with less than 400 hours time-in-service (TIS), before exceeding 500 hours TIS on the bolt, and for each bolt with 400 or more hours TIS, before accumulating an additional 100 hours TIS or 2 months on the bolt, whichever occurs first:

(1) Visually inspect each bolt for a crack, damage, corrosion, a nick, or missing cadmium plating in the central part of the bolt.

(i) If there is a crack, corrosion, a nick, any other damage, or missing cadmium plating in the central part of the bolt, before further flight, replace the bolt with an airworthy bolt.

(ii) If there is not a crack as a result of the initial visual inspection as required by paragraph (e)(1) of this AD, liquid-penetrant inspect the bolt in accordance with Annex A of AgustaWestland Bollettino Tecnico (BT) No. 109–135, BT No. 109EP–125, BT No. 109K–55, or BT No. 119–052, all dated December 19, 2012, as applicable to your model helicopter. If there is a crack, before further flight, replace the bolt with an airworthy bolt.

(2) Thereafter, for Agusta Model A109C helicopters, repeat the required actions of paragraph (e)(1) of this AD at intervals not to exceed 300 additional hours TIS or 6 months, whichever occurs first. For Agusta Model A109E, A109K2, and A119 helicopters,

repeat the required actions of paragraph (e)(1) of this AD at intervals not to exceed 200 additional hours TIS or 6 months, whichever occurs first.

(3) Do not install a bolt that has accumulated more than 400 hours TIS on any helicopter unless it has passed the required actions of paragraph (e)(1) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2013–0009, dated January 11, 2013. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0943.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6400, Tail Rotor.

(i) Material Incorporated by Reference

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

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

(i) AgustaWestland Bollettino Tecnico No. 109–135, December 19, 2012.

(ii) AgustaWestland Bollettino Tecnico No. 109EP–125, December 19, 2012.

(iii) AgustaWestland Bollettino Tecnico No. 109K–55, December 19, 2012.

(iv) AgustaWestland Bollettino Tecnico No. 119–052, December 19, 2012.

(3) For AgustaWestland service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39–0331–664757; fax 39–0331–664680; or at *http://www.agustawestland.com/technical-bulletins.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on April 18, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–09414 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0023; Directorate Identifier 2013–CE–048–AD; Amendment 39–17837; AD 2014–09–02]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain M7 Aerospace LLC Models SA26–T, SA26–AT, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–TT, SA227–BC (C–26A), SA227–CC, and SA227–DC (C–26B) airplanes. This AD was prompted by reports of jamming of the aileron control cable chain in the pilot and copilot control columns due to inadequate lubrication and maintenance of the chain. This AD requires repetitively replacing and lubricating the aileron chain, sprocket, and bearings in the control columns. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective June 5, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 5, 2014.

ADDRESSES: For service information identified in this AD, contact M7 Aerospace LP, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: none. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0023; 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: Andrew McAnaul, Aerospace Engineer, FAA, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain M7 Aerospace LLC Models SA26–T, SA26–AT, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–TT, SA227–BC (C–26A), SA227–CC, and SA227–DC (C–26B) airplanes. The NPRM published in the **Federal Register** on January 21, 2014 (79 FR 3336). The NPRM proposed to require repetitively replacing and lubricating the aileron chain, sprocket, and bearings in the control columns.

Comments

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

Request To Withdraw the Proposed AD

Pat Kremer of Ameriflight, LLC stated that the proposed AD is too broad of a stroke across the industry because of a limited number of operators that have not performed maintenance to the level in the proposed AD.

Pat Kremer also stated they replace the aileron chains every 10,000 hours time-in-service (TIS) (the compliance time in the proposed AD), along with the respective cables, on their fleet of 45 Model SA227 airplanes, and they have only occasionally found bearings that are worn. He also stated that they have never found a faulty sprocket.

From these statements, we infer that Pat Kremer wants the proposed AD withdrawn because it is unnecessary

and already covered through general maintenance.

We do not agree with the commenter. The flight hour and calendar replacement times in the proposed AD were based on service history showing wear and corrosion in the aileron chains and metal wear to the sprocket teeth. For example, a worn chain that jammed in the control column had only 7,000 total hours TIS and 17 years in service. Another operator found a severely corroded chain that had been installed for 18 years. M7 Aerospace, LLC received two aileron chains replaced by an operator after 10,000 hours TIS and thought to be ''good''; however, M7 found those chains had small metal particles within the grease, not from the chain but from worn sprockets. We also mirrored the required replacement times specified in the related service information provided by M7 Aerospace, LLC, the type certificate holder. M7 Aerospace, LLC. Customer Support representatives have a long history with these airplanes and have regularly seen issues over the last 30 years where the chains and bearings need to be replaced. Based on their service history experience, M7 Aerospace, LLC believes and the FAA has determined that including replacement of the sprocket and bearing with the chain replacement more fully addresses the unsafe condition. Although some operators do repetitively replace the aileron chains during cable replacement without finding damage, the original maintenance requirements do not clearly require mandatory periodic replacement of the chain, sprocket, and bearings, as intended by the airplane's manufacturer. We believe the replacement times in the proposed AD are necessary to assure that no unsafe condition develops due to an operator failing to comply with the proposed replacement times and lubrication requirements.

We have not changed the final rule AD action based on this comment.

Request To Incorporate Revised Service Bulletin

M7 Aerospace, LLC requested that we incorporate Revision 3 of SA26 Series Service Bulletin 26–27–001, dated April 8, 2014, into the AD to replace SA26 Series Service Bulletin 26–27–001 R2, dated October 23, 2013.

M7 Aerospace, LLC issued revision 3 to correct the part number of the chain in Steps 1.D.(1)(a) NOTE, 1.D.(4), 2.A.(2), and Table 1. Revision 3 also states that this part number chain must be used with new sprocket per Kit 26K71004–001. The SA26 airplanes were supplied with chain P/N 26–71026–001 and sprocket P/N 26–71010–001 from the factory. This chain and sprocket are a matched set. The new replacement chain P/N 27–71026–003 and sprocket included in kit P/N 27K71004–001 are also a matched set. Do not cross mix and match these chains and sprockets as the sprockets have different teeth pitch to mate with their respective chain. Only install either the chain P/N 27–71026–003 with sprocket kit P/N 27K71004–001 as a matched set or alternatively chain P/N 26–71026–001 with sprocket P/N 26–71010–001 as a matched set.

We agree with the commenter and have changed the final rule AD action based on this comment.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 3336, January 21, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 3336, January 21, 2014).

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

Costs of Compliance

We estimate that this AD affects 360 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacing and lubricating the aileron chain, sprocket, and bearings in the control columns.	20 work-hours × $85 per hour = $1,700	$1,935	$3,635	$1,308,600

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–09–02 M7 Aerospace LLC: Amendment 39–17837; Docket No. FAA–2014–0023; Directorate Identifier 2013–CE–048–AD.

(a) Effective Date

This AD is effective June 5, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–TT, SA227–BC (C–26A), SA227–CC, and SA227–DC (C–26B) airplanes, all serial numbers; Model SA26–T airplanes, serial numbers T26–2 through T26–99; and Model SA26–AT airplanes, serial numbers AT26–100 through AT26–180E, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code: 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by reports of jamming of the aileron control cable chain in the pilot and copilot control columns. We are issuing the AD to prevent jamming of the aileron control cable chain, which could result in loss of control.

(f) Compliance

Comply with this AD by doing the actions specified in paragraph (g) through paragraph (h) of this AD, including all subparagraphs, unless already done.

(g) Initially Replace and Lubricate the Aileron Control Cable Chain, Sprocket, and Bearings

Initially replace and lubricate the aileron control cable chain, sprocket, and bearings, and check the aileron control cable tension based on the conditions and compliance times in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, including all subparagraphs. The corrosion preventative must be removed from the chain (but not the cable) and the required actions must be done following the Accomplishment Instructions in M7 Aerospace LLC SA26 Series Service Bulletin 26–27–001 R3, dated April 8, 2014; M7 Aerospace LLC SA226 Series Service Bulletin 226–27–074 R2, dated October 23, 2013; M7 Aerospace LLC SA227 Series Service Bulletin 227–27–054 R2, dated October 23, 2013; and M7 Aerospace LLC SA227 Series Commuter Category Service Bulletin CC7–27–026 R2, dated October 23, 2013, as applicable. Criteria for the term ''properly lubricated'' is included in paragraphs 5a, 5b, and 5c of the Accomplishment Instructions section of M7 Aerospace LLC SA26 Series Service Bulletin 26–27–001 R3, dated April 8, 2014, and paragraphs 6a, 6b, and 6c of the Accomplishment Instructions section of M7 Aerospace LLC SA226 Series Service Bulletin 226–27–074 R2, dated October 23, 2013; M7 Aerospace LLC SA227 Series Service Bulletin 227–27–054 R2, dated October 23, 2013; and M7 Aerospace LLC SA227 Series Commuter Category Service Bulletin CC7–27–026 R2, dated October 23, 2013.

(1) *A review of the airplane records positively indicates that the aileron control cable chain in the pilot's and the copilot's control columns have been replaced and properly lubricated:* At whichever of the compliance times specified in paragraphs (g)(1)(i) or (g)(1)(ii) of this AD that occurs later.

(i) On or before reaching 10,000 hours time-in-service (TIS) from the time of the last aileron control cable chain replacement or within 13 years from the date of the last aileron control cable chain replacement, whichever occurs first.

(ii) Within the next 24 months from June 5, 2014 (the effective date of this AD).

(2) *A review of the airplane records positively indicates that the aileron control cable chain in the pilot's and the copilot's control columns have been replaced within the last 10,000 hours TIS, but proper lubrication cannot be verified:* At whichever of the compliance times specified in paragraphs (g)(2)(i) or (g)(2)(ii) of this AD that occurs first.

(i) On or before reaching 10,000 hours TIS since the last replacement or within the next 1,000 hours TIS after June 5, 2014 (the effective date of this AD), whichever occurs later.

(ii) Within the next 24 months from June 5, 2014 (the effective date of this AD).

(3) *A review of the airplane records does not positively indicate that the aileron control cable chain in the pilot's and the copilot's control columns have been replaced within the last 10,000 hours TIS:* At the compliance times specified in paragraphs (g)(3)(i), (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this AD, as applicable.

(i) *For airplanes with less than 10,000 hours TIS:* At whichever of the compliance times specified in paragraphs (3)(i)(A) or (3)(i)(B) of this AD that occurs first:

(A) On or before reaching 10,000 hours TIS or within the next 1,000 hours TIS after June 5, 2014 (the effective date of this AD), whichever occurs later.

(B) Within the next 24 months after June 5, 2014 (the effective date of this AD).

(ii) *For airplanes with 10,000 hours TIS or more but less than 20,001 hours TIS:* Within the next 1,000 hours TIS after June 5, 2014 (the effective date of this AD) or within the next 12 calendar months after June 5, 2014 (the effective date of this AD), whichever occurs first.

(iii) *For airplanes with 20,001 hours TIS or more but less than 30,001 hours TIS:* Within the next 750 hours TIS after June 5, 2014 (the effective date of this AD) or within the next 6 calendar months after June 5, 2014 (the effective date of this AD), whichever occurs first.

(iv) *For airplanes with 30,001 hours TIS or more:* Within the next 400 hours TIS after June 5, 2014 (the effective date of this AD) or within the next 3 calendar months after June 5, 2014 (the effective date of this AD), whichever occurs first.

(h) Repetitively Replace and Lubricate the Aileron Control Cable Chain, Sprocket, and Bearings

Replace and lubricate the aileron control cable chain, sprocket, and bearings, and check the aileron control cable tension repetitively thereafter at intervals not to exceed 10,000 hours TIS or 13 years after the date of the last aileron control cable chain replacement, whichever occurs first. The corrosion preventative must be removed from the chain (but not the cable) and the required actions must be done following the Accomplishment Instructions in M7 Aerospace LLC SA26 Series Service Bulletin 26–27–001 R3, dated April 8, 2014; M7 Aerospace LLC SA226 Series Service Bulletin 226–27–074 R2, dated October 23, 2013; M7 Aerospace LLC SA227 Series Service Bulletin 227–27–054 R2, dated October 23, 2013; and M7 Aerospace LLC SA227 Series Commuter Category Service Bulletin CC7–27–026 R2, dated October 23, 2013, as applicable.

(i) Credit for Actions Done Following Previous Service Information

This AD allows credit for the actions required in paragraphs (g)(1) through (g)(3) of this AD, including all subparagraphs, if done before June 5, 2014 (the effective date of this AD), following M7 Aerospace LLC SA26 Series Service Bulletin 26–27–001, dated June 6, 2013, or Service Bulletin 26–27–001 R1, dated September 30, 2013; M7 Aerospace LLC SA226 Series Service Bulletin 226–27–074, dated June 6, 2013, or Service Bulletin 226–27–074 R1, dated September 30, 2013; M7 Aerospace LLC SA227 Series Service Bulletin 227–27–054, dated June 6, 2013, or Service Bulletin 227–27–054 R1, dated September 30, 2013; and M7 Aerospace LLC SA227 Series Commuter Category Service Bulletin CC7–27–026, dated June 6, 2013, or Service Bulletin CC7–27–026 R1, dated September 30, 2013, as applicable.

(j) Paperwork Reduction Act Burden Statement

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

20591, Attn: Information Collection Clearance Officer, AES–200.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–150 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) M7 Aerospace LLC SA26 Series Service Bulletin 26–27–001 R3, dated April 8, 2014.

(ii) M7 Aerospace LLC SA226 Series Service Bulletin 226–27–074 R2, dated October 23, 2013.

(iii) M7 Aerospace LLC SA227 Series Service Bulletin 227–27–054 R2, dated October 23, 2013.

(iv) M7 Aerospace LLC SA227 Series Commuter Category Service Bulletin CC7–27–026 R2, dated October 23, 2013.

(3) For M7 Aerospace service information identified in this AD, contact M7 Aerospace LP, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: none.

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on April 18, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–09419 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0031; Directorate Identifier 2013–CE–054–AD; Amendment 39–17838; AD 2014–09–03]

RIN 2120–AA64

Airworthiness Directives; SOCATA Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 99–07–11 for SOCATA Model TBM 700 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks on the outboard hinge fittings. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective June 5, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 5, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0031; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone +33 (0) 5 62 41 73 00; fax +33 (0) 5 62 41 76 54, or for North America: SOCATA NORTH AMERICA, North Perry Airport, 7501 South Airport Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141; email: *mysocata@socata.daher.com;* Internet: *www.mysocata.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to certain SOCATA Model TBM 700 airplanes. The NPRM was published in the **Federal Register** on January 27, 2014 (79 FR 4300), and proposed to supersede AD 99–07–11, Amendment 39–11096 (64 FR 14820, March 29, 1999) (''AD 99–07–11'').

Since we issued AD 99–07–11 (64 FR 14820, March 29, 1999), SOCATA determined that the cause of the cracks in the horizontal stabilizer outboard hinge fitting was due to the incorrect installation of the fittings during production, which induced stress. SOCATA has issued new mandatory service information to require a modification to the outboard hinge fittings of the horizontal stabilizer to eliminate the stress.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2013–0035, dated February 22, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the 1990s, several occurrences were reported of finding cracks in the outboard hinge fittings of the horizontal stabiliser on TBM 700 aeroplanes.
>
> This condition, if not detected and corrected, could result in rupture of the outboard hinge fittings, which would adversely affect the structural integrity of the horizontal stabiliser. The in-flight loss of the horizontal stabiliser would result in reduced control of the aeroplane,
>
> To address this unsafe condition, DGAC France issued AD 1999–060(A), requiring repetitive inspections of the fittings and, depending on findings, corrective action.
>
> After that AD was issued, SOCATA determined that the cause of the cracks was a wrong installation of the fittings during production, inducing stress. Consequently, DGAC France issued AD 2000–307(A), partially retaining the requirements of DGAC France AD 1999–060(A), which was superseded, and required, depending on findings, that the installation of the fittings of in-service aeroplanes be rectified by

introduction of adjusting shims, a modification which was introduced as standard on the production line from MSN 162. The periodical inspection of the fittings for cracks was still required, pending a better understanding of the cause of the cracks.

Since DCAG France AD 2000–307(A) was issued, the results of the further analysis revealed that the final design (installation of shims on the outboard hinge fittings of the horizontal stabiliser) guarantees a service fatigue life which exceeds the one established for the TBM 700 during certification. Consequently, for aeroplanes with this modification, the repetitive inspections of the fittings can be discontinued. However, as the installation of the fittings was only required depending on findings, this modification may not have been accomplished on all affected aeroplanes.

For the reasons described above, this AD supersedes (and thereby cancels the requirements of) DGAC France AD 2000–307(A) and requires installation of shims on the outboard hinge fittings of the horizontal stabiliser.

You may examine the MCAI on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0031-0002.*

Comments

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

Request To Incorporate Amended Service Bulletin

DAHER–SOCATA requested that we incorporate Amendment 3 of Mandatory Service Bulletin SB 70–080, dated September 2013, into the AD to replace DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–080, Amendment 2, dated August 2012.

We agree with the commenter to incorporate the newer version of the related service information. We will also give credit for complying with the actions in the proposed AD if already done before the effective date of this AD following DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–080, Amendment 2, dated August 2012.

We have changed the final rule AD action based on this comment.

Request To Change the Number of Affected Airplanes

DAHER–SOCATA requested that we change the number of affected airplanes in the Cost of Compliance section from 159 to 80, which is the number of U.S.-registered airplanes.

We agree with the commenter and have changed the final rule AD action based on this comment.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 4300, January 27, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 4300, January 27, 2014).

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

Costs of Compliance

We estimate that this proposed AD will affect 80 products of U.S. registry. We also estimate that it would take about 6.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $500 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $84,200, or $1,052.50 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0031; 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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 Amendment 39–11096 (64 FR 14820, March 29, 1999), and adding the following new AD:

2014–09–03 SOCATA: Amendment 39–17838; Docket No. FAA–2014–0031; Directorate Identifier 2013–CE–054–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective June 5, 2014.

(b) Affected ADs

This AD supersedes AD 99–07–11, Amendment 39–11096 (64 FR 14820, March 29, 1999).

(c) Applicability

This AD applies to SOCATA TBM 700 airplanes, manufacturer serial numbers (MSN) 1 through 98, 100 through 156, and 158 through 161, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 55: Stabilizers.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks on the outboard hinge fittings. We are issuing this AD to require the use of new service information issued by DAHER–SOCATA to eliminate the stress on the outboard hinge fittings, which is causing the cracks. If this condition is not prevented, the outboard hinge fittings could fail causing reduced structural integrity of the horizontal stabilizer, which could result in reduced control.

(f) Actions and Compliance

Unless already done, within the next 100 hours time-in-service after June 5, 2014 (the effective date of this AD) or within the next 12 months after June 5, 2014 (the effective date of this AD), whichever occurs first, install shims on the outboard hinge fittings of the horizontal stabilizer. Do the modification following the Accomplishment Instructions in DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–080, Amendment 3, dated September 2013.

(g) Credit for Actions Done Following Previous Service Information

This AD allows credit for the actions required in paragraph (f) of this AD if done before June 5, 2014 (the effective date of this AD), following DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–080, Amendment 2, dated August 2012.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *alebert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2013–0035, dated February 22, 2013, for related information. You may examine the MCAI on the Internet *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0031-0002.*

(j) Material Incorporated by Reference

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

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

(i) DAHER–SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–080, Amendment 3, dated September 2013.

(ii) Reserved.

(3) For SOCATA service information identified in this AD, contact SOCATA, Direction des Services, 65921 Tarbes Cedex 9, France; telephone +33 (0) 5 62 41 73 00; fax +33 (0) 5 62 41 76 54, or for North America: SOCATA NORTH AMERICA, North Perry Airport, 7501 South Airport Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; fax: (954) 964–4141; email: *mysocata@socata.daher.com;* Internet: *www.mysocata.com.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on April 17, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–09421 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 140324264–4264–01]

RIN 0694–AG12

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding thirteen persons under fourteen entries to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the destinations of Cyprus, Luxembourg and Russia. There are fourteen entries to address thirteen persons because one person is being listed in multiple countries, resulting in an additional entry. Specifically, the additional entry covers one person in Luxembourg who also has an address in Russia.

DATES: *Effective Date:* This rule is effective May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) notifies the public about entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests, including terrorism and export control violations involving abuse of human rights. Certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require licenses from BIS and are usually subject to a policy of denial. The availability of license exceptions in such transactions is very limited. The license review policy for each entity is identified in the license review policy column on the Entity List and the availability of license exceptions is noted in the **Federal Register** notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to

the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote. The Departments represented on the ERC approved these changes to the Entity List.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add thirteen persons under fourteen entries to the Entity List on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The thirteen persons added to the Entity List consist of one person in Cyprus, one person in Luxembourg and twelve persons in Russia.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these thirteen persons to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List.

The thirteen persons being added to the Entity List have been determined by the ERC to be involved in activities that are contrary to the national security or foreign policy interests of the United States. The U.S. Government has determined that the Russian Federation's actions—including the deployment of Russian Federation military and intelligence forces in the Crimea area of Ukraine (Occupied Crimea) and Eastern Ukraine—are in clear violation of Ukrainian sovereignty and territorial integrity and a breach of international law, including Russia's obligations under the United Nations Charter and under its 1997 military basing agreement with Ukraine. They are also inconsistent with the 1994 Budapest Memorandum, under which, in response to certain commitments by Ukraine, Russia, the United States and the United Kingdom, the signatories consecrated the sovereignty and territorial integrity of Ukraine as an independent state by applying the principles of territorial integrity and nonintervention found in the Helsinki Final Act, the accords signed by the Conference on Security and Cooperation in Europe of 1975. The Russian Federation's actions also conflict with the Vienna Document of 1979, as adopted by the members of the Organization for Security and Cooperation in Europe (of which the Russian Federation is a member), which includes a provision for exchange and verification of military information among membership, including but not limited to prior notification of military activities such as major troop exercises.

On March 6, 2014, the President of the United States issued Executive Order 13660 (79 FR 13491), *Blocking Property of Certain Persons Contributing to the Situation in Ukraine,* finding that the actions and policies of persons who have asserted governmental authority in Occupied Crimea without the authorization of the Government of Ukraine undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. The Executive Order also declares a national emergency to deal with that threat.

On March 16, 2014, the President of the United States issued Executive Order 13661 (79 FR 15533), *Blocking Property of Additional Persons Contributing to the Situation in Ukraine.* That order expanded the scope of the national emergency declared in Executive Order 13660, finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine—including the recent deployment of Russian Federation military forces in Occupied Crimea—undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Specifically, Executive Order 13661 includes a directive that all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: persons who have materially assisted, sponsored or provided financial, material or technological support for, or goods and services to or in support of a senior official of the government of the Russian Federation. Under Section 8 of the order, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the order.

The Department of the Treasury, pursuant to Executive Order 13661, has designated the thirteen persons identified below. In conjunction with that designation, the Department of Commerce imposes a license requirement for exports, reexports, or transfers (in-country) to these blocked persons. This license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13661. The entities being added to the Entity List under this rule, Stroytransgaz Holding, Volga Group, Aquanika, Avia Group LLC, Avia Group Nord LLC, CJSC Zest, Sakhatrans LLC, Stroytransgaz Group, Stroytransgaz LLC, Stroytransgaz OJSC, Stroytransgaz-M LLC, Stroygazmontazh, and Transoil are owned or controlled by, directly or indirectly, persons whose property and interests in property were blocked by the Department of the Treasury's Office of Foreign Assets Control on March 20, 2014 pursuant to Executive Order 13661. One of the persons being added to the Entity List under this rule, Volga Group, has addresses in both Luxembourg and Russia. The additional address accounts for the fourteenth entry for the thirteen persons being added to the Entity List in this rule.

Pursuant to § 744.11 of the EAR, the conduct of these thirteen persons raises sufficient concern that prior review of exports, reexports, or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to these persons, will enhance BIS's ability to protect the foreign policy and national security interests of the United States.

For the thirteen persons added to the Entity List, there is a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule.

This final rule adds the following thirteen persons under fourteen entries to the Entity List:

Cyprus

(1) *Stroytransgaz Holding,* a.k.a., the following four aliases:

—STG Holding Limited, *and*
—STG Holdings Limited, *and*
—Stroytransgaz Holding Limited, *and*
—STGH.

33 Stasinou Street, Office 2 2003, Nicosia Strovolos, Cyprus.

Luxembourg

(1) *Volga Group,* a.k.a., the following three aliases:

—Volga Group Investments, *and*
—Volga Resources, *and*
—Volga Resources Group.

3, rue de la Reine L–2418 Luxembourg (See alternate address under Russia).

Russia

(1) *Aquanika,* a.k.a., the following five aliases:

—Aquanika LLC, *and*
—LLC Russkoye Vremya, *and*
—Obshchestvo S Organichennoi Otvetstvennostyu 'Russkoe Vremya', *and*
—Russkoe Vremya OOO, *and*
—Russkoye Vremya LLC.

47A Sevastopolski Ave., of. 304, Moscow 117186, Russia; *and*

1/2 Rodnikovaya ul., Savasleika s., Kulebakski raion, Nizhegorodskaya oblast 607007, Russia;

(2) *Avia Group LLC,* a.k.a., the following one alias:

—Avia Group Ltd.

Terminal Aeroport Sheremetyevo Khimki, 141400 Moskovskaya obl., Russia;

(3) *Avia Group Nord LLC,* 17 A, Startovaya St., Saint Petersburg, Russia;

(4) *CJSC Zest,* a.k.a., the following one alias:

—Zest Leasing.

pr. Medikov 5, of. 301, St. Petersburg, Russia; *and*

2 Liter a Pl. Rastrelli, St. Petersburg, 191124 Russia;

(5) *Sakhatrans LLC,* a.k.a., the following two aliases:

—Obshchestvo S Organichennoi Otvetstvennostyu'sakha (Yakutskaya) Transportnaya Kompaniya, *and*
—Sakhatrans OOO.

14 ul. Molodezhnaya Rabochi Pos. Vanino, 682860 Vaninski, Raion Khabarovski Krai, Russia;

(6) *Stroytransgaz Group,* a.k.a., the following two aliases:

—STG Group, *and*
—Stroytransgaz.

3 Begovaya Street, Building #1, Moscow, 125284, Russia;

(7) *Stroytransgaz LLC,* a.k.a., the following one alias:

—OOO Stroytransgaz.

House 65, Novocheremushkinskaya St., Moscow 117418, Russia;

(8) *Stroytransgaz OJSC,* a.k.a., the following one alias:

—OAO Stroytransgaz.

House 58, Novocheremushkinskaya St., Moscow 117418, Russia;

(9) *Stroytransgaz-M LLC,* Novy Urengoy City, 26th Meeting of the Communist Party Street, House 2V, Tyumenskaya Oblast, Yamalo-Nenetsky Autonomous Region 629305, Russia;

(10) *Stroygazmontazh,* a.k.a., the following three aliases:

—Limited Liability Company Stroygazmontazh, *and*
—SGM, *and*
—Stroygazmontazh Corporation.

53 prospekt Vernadskogo, Moscow, 119415, Russia;

(11) *Transoil,* a.k.a., the following four aliases:

—Limited Liability Company Transoil, *and*
—Transoil LLC, *and*
—Transoyl SNG Ltd., *and*
—Obshchestvo S Organichernnoi Otvetstvennostyu Transoil.

18A Petrogradskaya nab., St. Petersburg, Russia, 197046;

(12) *Volga Group,* a.k.a., the following three aliases:

—Volga Group Investments, *and*
—Volga Resources, *and*
—Volga Resources Group.

Russia (See alternate address under Luxembourg).

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on May 1, 2014, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 8, 2013, 78, 2013, 78 FR 49107 (August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this

rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 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; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013); Notice of January 21, 2014, 79 FR 3721 (January 22, 2014).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding under Cyprus, in alphabetical order, one Cypriot entity;

■ b. By adding in alphabetical order the destination of Luxembourg under the country column and one Luxembourgish entity; and

■ c. By adding under Russia, in alphabetical order, twelve Russian entities.

The additions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
Cyprus	*	*	*	*
	Stroytransgaz Holding, a.k.a., the following four aliases: —STG Holding Limited, *and* —STG Holdings Limited, *and* —Stroytransgaz Holding Limited, *and* —STGH. 33 Stasinou Street, Office 2 2003, Nicosia Strovolos, Cyprus.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
*	*	*	*	*
Luxembourg	Volga Group, a.k.a., the following three aliases: —Volga Group Investments, *and* —Volga Resources, *and* —Volga Resources Group. 3, rue de la Reine L–2418 Luxembourg (See alternate address under Russia).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
*	*	*	*	*
Russia	*	*	*	*
	Aquanika, a.k.a., the following five aliases: —Aquanika LLC, *and* —LLC Russkoye Vremya, *and* —Obshchestvo S Organichennoi Otvetstvennostyu 'Russkoe Vremya', *and* —Russkoe Vremya OOO, *and* —Russkoye Vremya LLC.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	47A Sevastopolski Ave., of. 304, Moscow 117186, Russia; *and* 1/2 Rodnikovaya ul., Savasleika s., Kulebakski raion, Nizhegorodskaya oblast 607007, Russia.			
	*	*	*	*
	Avia Group LLC, a.k.a., the following one alias: —Avia Group Ltd Terminal Aeroport Sheremetyevo Khimki, 141400 Moskovskaya obl., Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	Avia Group Nord LLC, 17 A, Startovaya St., Saint Petersburg, Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	CJSC Zest, a.k.a., the following one alias: —Zest Leasing pr. Medikov 5, of. 301, St. Petersburg, Russia; *and* 2 Liter a Pl. Rastrelli, St. Petersburg, 191124 Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Sakhatrans LLC, a.k.a., the following two aliases: —Obshchestvo S Organichennoi Otvetstvennostyu'sakha (Yakutskaya) Transportnaya Kompaniya, *and* —Sakhatrans OOO 14 ul. Molodezhnaya Rabochi Pos. Vanino, 682860 Vaninski, Raion Khabarovski Krai, Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Stroytransgaz Group, a.k.a., the following two aliases: —STG Group, *and* —Stroytransgaz 3 Begovaya Street, Building # 1, Moscow, 125284, Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	Stroytransgaz LLC, a.k.a., the following one alias: —OOO Stroytransgaz House 65, Novocheremushkinskaya St., Moscow 117418, Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	Stroytransgaz OJSC, a.k.a., the following one alias: —OAO Stroytransgaz. House 58, Novocheremushkinskaya St., Moscow 117418, Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	Stroytransgaz-M LLC, Novy Urengoy City, 26th Meeting of the Communist Party Street, House 2V, Tyumenskaya Oblast, Yamalo-Nenetsky Autonomous Region 629305, Russia	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	Stroygazmontazh, a.k.a., the following three aliases: —Limited Liability Company Stroygazmontazh, *and* —SGM, *and* —Stroygazmontazh Corporation	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	53 prospekt Vernadskogo, Moscow, 119415, Russia			
	*	*	*	*
	Transoil, a.k.a., the following four aliases: —Limited Liability Company Transoil, *and* —Transoil LLC, *and* —Transoyl SNG Ltd., *and* —Obshchestvo S Organichernnoi Otvetstvennostyu Transoil 18A Petrogradskaya nab., St. Petersburg, Russia, 197046	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Volga Group, a.k.a., the following three aliases: —Volga Group Investments, *and* —Volga Resources, *and* —Volga Resources Group. Russia (see alternate address under Luxembourg).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.

* * * * * * *

Dated: April 28, 2014.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security (BIS).

[FR Doc. 2014–10027 Filed 4–30–14; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 120504049–1049–01]

RIN 0694–AF69

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding nine persons to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the destination of China.

DATES: *Effective Date:* This rule is effective May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) notifies the public about entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests, including terrorism and export control violations involving abuse of human rights. Certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require licenses from BIS and are usually subject to a policy of denial. The availability of license exceptions in such transactions is very limited. The license review policy for each entity is identified in the license review policy column on the Entity List and the availability of license exceptions is noted in the **Federal Register** notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-user Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add nine persons under nine entries to the Entity List on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The nine entries added to the Entity List consist of nine entries in China.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these nine persons to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a

significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The nine persons being added have been determined by the ERC to be involved in activities that are contrary to the national security or foreign policy interests of the United States, specifically the activities described under paragraphs (b)(2) and (b)(5) of § 744.11.

The ERC has reasonable cause to believe that the nine persons, who are being added under nine entries in this rule and are located in China, have supplied Iran's ballistic missile program through the Chinese proliferator Li Fangwei (a.k.a. Karl Lee). Since 2004, at least one of Li's companies or Li has been designated by the Department of State under the Iran North Korea and Syria Nonproliferation Act (INKSNA) sanctions or by the Department of the Treasury's Office of Foreign Assets Control (OFAC) under Executive Order 13392 on the basis of support to Iran's ballistic missile program. The nine persons are as follows: Beijing Aeronautical Manufacturing Technology Research Institute, Chengdu Latest Electronics Technology Company, Dalian Ligong Safety Equipment Company Limited, Fushun Jinly Petrochemical Carbon Co., Ltd., Liaoyang Carbon Co., Ltd., Shanghai Hentong Optics Technology Limited, Weihai New Era Chemical Industrial Company Limited, Xinghe Xingyong Carbon Co., Ltd. and Zhu Kuibao.

Pursuant to § 744.11(b)(2) and (b)(5) of the EAR, the ERC determined that the conduct of these nine persons raises sufficient concern that prior review of exports, reexports, or transfers (in-country) of items subject to the EAR involving these persons, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

For the Beijing Aeronautical Manufacturing Technology Research Institute, the ERC specified a license requirement for all items subject to the EAR, and established a license application review policy of presumption of approval for EAR99 items and case-by-case review for all items on the Commerce Control List. For the other eight persons recommended for addition, the ERC specified a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule.

This final rule adds the following nine persons to the Entity List:

China

(1) *Beijing Aeronautical Manufacturing Technology Research Institute,* a.k.a., the following two aliases:

—BAMTRI; and

—Aviation Industry Corporation of China's (AVIC) Institute 625.

No. 1 East Military Village, North Baliqiao Station, Chaoyang District, Beijing, China; and

Xue Yuan Road No. 37, HaiDian District, Beijing, China;

(2) *Chengdu Latest Electronics Technology Company,*

No. 2069 West Yuanda Road, Pixian Modern Industry Harbor South District, Chengdu, Sichuan, China 611730; and Suite 1–6–1702, West Diaoyu Yaijia Garden, Haidian District, Beijing, China 100142;

C8–1–402 Xiduan Zhonghua Century City, Technology Road, Xian China 710075; *and* 2–308 No. 115 Hongshan Road, Nanjing, China 210018;

(3) *Dalian Ligong Safety Equipment Company Limited,*

No. 26 Liaohe East Road, Double D Port, Economic and Technological Development Zone, Dalian, China 116620;

(4) *Fushun Jinly Petrochemical Carbon Co., Ltd.,*

Room 2104, Jinhui Plaza, No. 16 Dongsi Road, Xinfu District, Fushun, Liaoning, China, 113015; and East of No. 2 Petroleum Factory, Dongzhou District, Fushun, Liaoning, China, 113004;

(5) *Liaoyang Carbon Co., Ltd.,*

No. 688 Liuan Road, Liuerpu Economic Development Zone Liaoyang City, Liaoning, China 11212;

(6) *Shanghai Hentong Optics Technology Limited,* a.k.a., the following two aliases:

—Shanghai Hengtong Group; *and*

—Shanghai Hengtong Optic-Electric Co., Ltd.

12F Tower A, Fareast International Plaza, 319 Xianxia Road, Shanghai, China;

(7) *Weihai New Era Chemical Industrial Company Limited,*

No. 985 Fenghua Shan Road, Yangting New Industrial District, Huancui District, Weihai, China;

(8) *Xinghe Xingyong Carbon Co., Ltd.,*

Xicheng Wai, Chengguan Town, Xinghe County, Inner Mongolia, China; *and*

(9) *Zhu Kuibao,*

No. 51 Yongding Rd., Haidian District, Beijing, China; *and*

No. 37 Xueyuan Road, Haidian District, Beijing, China.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on May 1, 2014 pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 8, 2013, 78, 2013, 78 FR 49107 (August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not

significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List if a proposed rule is published, doing so would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 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; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013); Notice of January 21, 2014, 79 FR 3721 (January 22, 2014).

■ 2. Supplement No. 4 to part 744 is amended by adding under China, in alphabetical order, nine Chinese entities; the additions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
China, People's Republic of.				
	Beijing Aeronautical Manufacturing Technology Research Institute, a.k.a., the following two aliases: —BAMTRI; *and* —Aviation Industry Corporation of China's (AVIC) Institute 625. No. 1 East Military Village, North Baliqiao Station, Chaoyang District, Beijing, China; *and* Xue Yuan Road No. 37, HaiDian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of approval for EAR99; case-by-case review for all items on the CCL.	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Chengdu Latest Electronics Technology Company, No. 2069 West Yuanda Road, Pixian Modern Industry Harbor South District, Chengdu, Sichuan, China 611730; *and* Suite 1–6–1702, West Diaoyu Yaijia Garden, Haidian District, Beijing, China 100142; *and* C8–1–402 Xiduan Zhonghua Century city, Technology Road, Xian, China 710075; *and* 2–308 No. 115 Hongshan Road, Nanjing, China 210018.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Dalian Ligong Safety Equipment Company Limited, No. 26 Liaohe East Road, Double D Port, Economic and Technological Development Zone, Dalian, China 116620.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Fushun Jinly Petrochemical Carbon Co., Ltd., Room 2104, Jinhui Plaza, No. 16 Dongsi Road, Xinfu District, Fushun, Liaoning, China; *and* 113015 East of No. 2 Petroleum Factory, Dongzhou District, Fushun, Liaoning, China, 113004.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Liaoyang Carbon Co., Ltd., No. 688 Liuan Road, Liuerpu Economic Development Zone, Liaoyang City, Liaoning, China 11212.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Shanghai Hengtong Optics Technology Limited, a.k.a., the following two aliases: —Shanghai Hengtong Group; *and* —Shanghai Hengtong Optic-Electric Co., Ltd. 12F Tower A, Fareast International Plaza, 319 Xianxia Road, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Weihai New Era Chemical Industrial Company Limited, No. 985 Fenghua Shan Road, Yangting New Industrial District, Huancui District, Weihai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*
	Xinghe Xingyong Carbon Co., Ltd., Xicheng Wai, Chengguan Town, Xinghe County, Inner Mongolia, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
	*	*	*	*

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Zhu Kuibao, No. 51 Yongding Rd., Haidian District, Beijing, China; *and* No. 37 Xueyuan Road, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	79 FR [INSERT FR PAGE NUMBER] May 1, 2014.
*	*	*	*	*	*	*

Dated: April 28, 2014.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2014–10035 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0303]

Drawbridge Operation Regulation; Miner Slough, Near Rio Vista, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the California Department of Transportation, Hwy 84 drawbridge across Miner Slough, mile 5.5, near Rio Vista, CA. The deviation is necessary to allow the bridge owner to repair the damaged deck system of the bridge. This deviation allows the bridge to remain in the closed-to-navigation position with a 7 foot reduction in vertical clearance during the deviation period.

DATES: This deviation is effective without actual notice from May 1, 2014 through 6 p.m. on July 21, 2014. For the purposes of enforcement, actual notice will be used from 7 a.m. on April 23, 2014, until May 1, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0303], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Hwy 84 drawbridge, mile 5.5, over Miner Slough near Rio Vista, CA. The drawbridge navigation span ordinarily provides 17 feet vertical clearance above Mean High Water in the closed-to-navigation position. Containment installed below low steel of the bridge reduces vertical clearance by 7 feet and will be lighted at night with red lights. In accordance with 33 CFR 117.173 Miner Slough, the draw of the California Department of Transportation highway bridge, mile 5.5 between the northerly end of Ryer Island and Holland Tract, shall open on signal if at least 12 hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 7 a.m. on April 23, 2014 to 6 p.m. on July 21, 2014, to allow Caltrans to repair the damaged deck system of the bridge. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position with a 7 foot reduction in vertical clearance due to containment installed below the bridge, may do so at any time. The bridge will not be able to open for emergencies during this deviation. The Sacramento Deep Water Channel and Steamboat Slough can be used as alternate routes for vessels unable to pass through the bridge in the closed position, and with containment installed. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule and all encroachments in the navigational openings shall be removed, immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 21, 2014.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2014–09986 Filed 4–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0285]

RIN 1625–AA09

Drawbridge Operation Regulation; Elizabeth River, Elizabeth, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the First Street Bridge across the Elizabeth River at mile 0.4, at Elizabeth, New Jersey. The drawbridge was converted to a fixed bridge in July 2010, and the operating regulation is no longer necessary.

DATES: This rule is effective May 1, 2014.

ADDRESSES: The docket for this final rule, [USCG–2014–0285] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this final rule. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Program, telephone 212–668–7165, email *joe.m.arca@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment 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 and opportunity to comment 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the First Street Bridge, that once required draw operations in 33 CFR 117.718(b), was removed and converted to a fixed bridge in July 2010. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge has been a fixed bridge for four years and this rule merely requires an administrative change to the **Federal Register**, in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

B. Basis and Purpose

The First Street Bridge across the Elizabeth River at mile 0.4, was converted to a fixed bridge in July 2010. It has come to the attention of the Coast Guard that the governing regulation for this drawbridge was never removed subsequent to the conversion to a fixed bridge. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation, 33 CFR 117.718(b), pertaining to the former drawbridge.

The purpose of this rule is to remove the paragraph of 33 CFR 117.718(b) that refers to the First Street Bridge at mile 0.4, from the Code of Federal Regulations since it governs a bridge that is no longer able to be opened.

C. Discussion of Rule

The Coast Guard is changing the regulation in 33 CFR 117.718(b) by removing restrictions and the regulatory burden related to the draw operations for this bridge that is no longer a drawbridge. The change removes the paragraph of the regulation governing the First Street Bridge since the bridge has been converted to a fixed bridge. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the First Street Bridge, which in fact is no longer is a drawbridge. This change does not affect waterway or land traffic. This change does not affect nor does it alter the operating schedules in 33 CFR 117.718 that govern the remaining active drawbridges on the Elizabeth River.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not consider this rule to be ''significant'' under that Order because it is an administrative change and does not affect the way vessels operate on the waterway.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no effect on small entities since this drawbridge has been converted to a fixed bridge and the regulation governing draw operations for this bridge is no longer applicable. There is no new restriction or regulation being imposed by this rule; therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

3. 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).

4. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

5. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

6. 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

7. 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.

8. 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.

9. 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.

10. 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.

11. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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 involves the drawbridge operation for the First Street Bridge which has been converted to a fixed bridge. This rule is categorically excluded, under figure 2–1, paragraph (32) (e), of the Instruction.

Under figure 2–1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.718 [Amended]

■ 2. Remove § 117.718(b) and redesignate § 117.718(c) as § 117.718(b) respectively.

Dated: April 17, 2014.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2014–09999 Filed 4–30–14; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 13–49; FCC 14–30]

Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission rules governing the operation of unlicensed National Information Infrastructure (U–NII) devices in the 5 GHz band to make broadband technologies more widely available for consumers and businesses by increasing power and permitting outdoor use in the U–NII–1 band and by adding 25 megahertz to the U–NII–3 band; it also takes steps to reduce the potential for harmful interference to incumbent operations. The proceeding satisfies the requirements of the Spectrum Act, by which Congress required that the Commission begin a proceeding regarding U–NII devices in the 5 GHz band within a year if it determined, after consultation with NTIA, that incumbents will be protected and their missions will not be compromised.

DATES: Effective June 2, 2014 except for § 15.407(j), which contains information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Aole Wilkins, Office of Engineering and Technology, 202–418–2406, *Aole.Wilkins@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, ET Docket No. 13–49, FCC 14–30 adopted March 31, 2014, and released April 1, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of First Report and Order

1. In 2013, the Commission issued the *Notice of Proposed Rule Making,* 78 FR 21320, April 10, 2013, that initiated this proceeding, with the goal of supporting the growing needs of businesses and consumers for fixed and mobile broadband communications using Unlicensed National Information Infrastructure (U–NII) devices in the 5.15–5.35 GHz and 5.47–5.85 GHz bands. At the same time, it recognized the need to modify its rules to better ensure that these devices do not cause harmful interference to authorized Federal and non-Federal users in these bands. U–NII devices are unlicensed intentional radiators, which use wideband digital modulation techniques to provide a wide array of high-data-rate mobile and fixed communications used by individuals, businesses, and institutions, particularly for wireless

local area networking—including Wi-Fi—and broadband access.

2. U–NII devices already play an important role in meeting public demand for wireless broadband service, particularly wireless local area networking and broadband access. This foundation, coupled with increasing demand for wireless broadband applications and new Wi-Fi technology, signals a bright future for unlicensed operations in the 5 GHz band. To meet continuing demand, in this First R&O the Commission takes a number of actions to increase the utility of the 550 megahertz of the 5 GHz band already available for U–NII operations, while protecting incumbent users from harmful interference.

3. In this First R&O, the Commission modified the Part 15 rules for the U–NII–1 band by removing the indoor-only restriction and increasing the permitted power level. These changes provide more flexibility for providing broadband service, whether indoors or outdoors, and take advantage of the new 802.11ac standard to achieve higher data rate transmissions across multiple U–NII segments of the 5 GHz band. To protect Mobile Satellite Service in the U–NII–1 band from harmful interference, the Commission also created certain technical rules for U–NII–1 devices, principally requiring directionality in the antennas to limit emissions in the upward direction and requiring operators with more than 1000 outdoor access points to register information regarding their systems with the Commission.

4. The Commission described circumstances which would facilitate waivers under its rules for converting existing U–NII–3 devices to incorporate the U–NII–1 band without having to comply with the new antenna rules.

5. The Commission also modified its rules to require manufacturers to secure the software in all U–NII devices to prevent modifications that would allow the device to operate in a manner inconsistent with the equipment certification. This change will reduce the likelihood of harmful interference not only to Terminal Doppler Weather Radar (TDWR) systems, but to all authorized services in the 5 GHz bands.

6. The Commission consolidated the provisions in § 15.247 of the rules (applicable to digitally modulated devices for this band) with the rules in § 15.407 (applicable to U–NII devices) so that all the digitally modulated devices operating in the 5 GHz band will operate under the combined rules and be subject to the new device security requirement. This change addresses a major cause of harmful interference to the TDWR: in which users have illegally modified devices certified to operate under § 15.247 to operate in the 5.47–5.725 GHz band without implementing Dynamic Frequency Selection (DFS). This rule consolidation also will reduce complexity and costs in authorizing technically similar devices under different rules.

Increasing the Utility of the U–NII–1 Band

7. The majority of commenters support allowing outdoor operations in the U–NII–1 band, and some level of harmonization across the U–NII bands. The Commission concluded that it is in the public interest to permit outdoor operation of U–NII devices in the U–NII–1 band, and that it can do so while appropriately protecting MSS services from harmful interference. Specifically, the Commission revised its rules to permit transmitter power levels up to 1 W, as permitted in the U–NII–3 band, with safeguards to minimize the likelihood of harmful interference to Globalstar's MSS system.

8. The Commission observed that NCTA's and Globalstar's initial analyses of the likelihood of harmful interference to Globalstar's system were based on fundamentally different assumptions about future factors such as the extent of deployments, the technical characteristics of the equipment, and the extent of the communications traffic, and that these assumptions are inherently uncertain. The Commission determined that it can minimize the significance of these assumptions with a technical resolution which restricts a device's emissions when operating above a certain elevation angle, coupled with a reporting requirement directed at large scale deployments, which will facilitate corrective measures should they become necessary.

9. Since the noise floor increase seen by the satellite will be a function of the aggregated energy from U–NII–1 emissions at elevation angles above 30 degrees, the Commission addressed the likelihood of interference to the satellite by restricting upward emissions to sharply reduce the energy that will be received by the satellite from each individual access point. As a result, it is far less likely that harmful interference will occur, even for proliferation of access points greater than that presumed in either party's earlier analysis, making moot to a large degree the disagreements as to the number of access points that might be deployed.

10. The Commission has concluded that generally allowing fixed access point outdoor operations at a conducted power level of up to 1 W (30 dBm), and a PSD of 17 dBm/MHz with an allowance for a 6 dBi antenna gain (*i.e.,* a total 36 dBm EIRP), and limiting the maximum EIRP above 30 degrees elevation to 125 mW (21 dBm) EIRP, provides reasonable protection from harmful interference to Globalstar's system. Both NCTA and Globalstar agree that this protocol would provide interference protection to Globalstar, while permitting access to the spectrum for U–NII users. The Commission believes that expressing a limit in terms of EIRP will provide U–NII manufacturers and operators with flexibility regarding how to design their equipment, while still achieving the required levels of protection. Manufacturers will be able to demonstrate compliance with the EIRP limit by reducing antenna gain in the upward direction, or by limiting the transmitter power, or a combination of the two, as best suits their particular purpose.

11. In conjunction with this requirement, the Commission will continue to monitor developments in this band. Globalstar has expressed strong concerns in this proceeding that proposed unchecked, widespread deployments of outdoor access points may disrupt licensed services in the band. To provide a safeguard and require accountability for such large deployments, the Commission adopted the following filing requirement. Before deploying an aggregate total of more than one thousand outdoor access points within the U–NII–1 band, companies must submit a letter to the Commission acknowledging that, should harmful interference to licensed services in this band occur, they will be required to take corrective action.

12. The Commission will permit current UN–II–3 devices to operate under the new U–NII–1 rules under two potential scenarios, but in both cases, the equipment must comply with the software security requirements that it adopted to prevent unauthorized device modifications. First, at any time manufacturers or equipment operators may file a request for a permissive change to their current equipment authorizations demonstrating compliance with the rules adopted. If manufacturers of the previously deployed equipment are able to demonstrate compliance with the EIRP requirement described, the Commission will allow a permissive change with up to 1 W of conducted power.

13. Second, for outdoor U–NII–3 band systems installed prior to the effective date of the rules adopted are not able to

comply with the new EIRP requirement,, the Commission suggested the kind of information that could be submitted to expedite consideration and grant of a waiver of the new antenna rules for existing devices. The Commission determined that providing the following about the waiver petitioner's existing deployments will be important to its ability to assess waiver requests: the number of devices installed, general location of each deployment, ability to reprogram the devices, and ability to adjust operating power from a central network management system. The Commission concluded that waiver requests meeting these parameters and made within 30 days of the effective date of its rules are likely to serve the public interest because granting them is highly unlikely to create any risk of harmful interference, given the small numbers involved and the limited departure from the new technical requirements for the U–NII–1 band. Moreover, having such waiver petitioners provide information about the numbers of installed devices that would be covered by the grant, as well as their general location, will help the Commission monitor the accuracy of its predictions in these regards and allow the Commission to alter course or take effective corrective action if necessary. The Commission has specifically delegated to the Office of Engineering and Technology the authority to grant waivers under these favorable conditions. Following the 30-day window, operators and manufacturers may continue to file petitions for waiver, but the Commission will decide such petitions without the assurances of good cause provided by the described approach.

14. All parties receiving a waiver must then demonstrate compliance with the technical requirements through the equipment certification process by filing a permissive change request including the approved waiver. There is no deadline for filing for such a permissive change.

15. The Commission will permit fixed point-to-point devices operating in the U–NII–1 band to employ transmitting antennas with directional gain up to 23 dBi without any corresponding reduction in the transmitter maximum output power or maximum power spectral density, and with no reduction of power in the vertical direction. It will not require these devices to reduce the antenna gain in the vertical direction. Such point-to-point operations are typically highly directional and aim their signals along the earth, and therefore are less likely to contribute significant energy to that received by the satellite. They are also relatively few in numbers as compared to the widespread distribution of access points examined by Globalstar and NCTA.

16. The Commission will permit indoor access points operating in the U–NII–1 band at 1 W of conducted power with a 6 dBi antenna gain and no reduction in vertical antenna gain coupled with a requirement for a 1 dB reduction in conducted power for every 1 dB that the antenna gain exceeds 6 dBi. These types of consumer-oriented devices should not contribute to interference concerns, as the building materials used in indoor environments should sufficiently attenuate energy transmitted from indoor devices to prevent any significant contribution to any noise rise seen by Globalstar's satellite.

17. The Commission will permit any client device which operates under control of an access point in the U–NII–1 band to operate at conducted power levels up to 250 mW and a PSD of 11 dBm/MHz with a 6 dBi gain antenna without distinction to whether devices are located indoor or outdoor; power must be reduced by 1 dB for every dB that the antenna gain exceeds 6 dBi. These devices will not cause interference to Globalstar's MSS because of their nature of operation. A client device operates with an access point in a very asymmetric nature, in that very little data is transmitted in the uplink direction (*i.e.* transmitted from the client device) as compared to data transmitted in the downlink direction (*i.e.* transmitted from the access point). Client devices are typically mobile or portable, such as handsets or laptops and tablets. These devices are not typically installed in permanent outdoor locations, and due to their mobile nature the antenna gain in any particular direction cannot be guaranteed. Because client devices will most often be used in indoor locations with very low antenna heights any emissions will be shielded to some extent by buildings, foliage or other obstructions. While many such devices are able to operate in either a client mode, hotspot mode or a peer-peer mode, the Commission does not believe that such peer-to-peer modes will be used frequently or deployed as part of an outdoor network; and thus, it will permit mobile or portable client devices to operate in either mode without changing maximum power levels. Finally, many client devices incorporate power control features that cause the device to use as little power necessary to provide necessary communications. These factors compound each other and point to a very low impact from client devices and the Commission does not find a need to impose the antenna requirements described for access points.

18. The Commission notes that Globalstar has the capability to monitor increases in noise levels at its satellites, and anticipates that Globalstar will report any significant changes in the noise levels and provide specific details as to how it is affecting its operations. The Commission also encourages all interested parties to continue to communicate regularly among each other and with Commission staff regarding developments in this band.

Security Features for All U–NII Bands

19. Because the current and future use of the 5 GHz U–NII bands is heavily reliant on the successful implementation of the Commission's technical rules, the Commission proposed to require that manufacturers implement security features in any digitally modulated device capable of operating in any of the U–NII bands, so that third parties are not able to reprogram the device to operate outside the parameters for which the device was certified.

20. Because 5 GHz U–NII devices are able to operate across such a wide swath of spectrum, any device could potentially be reprogrammed to operate outside of its certified frequency range. Accordingly, the Commission adopted its proposal in the *NPRM* that manufacturers must take steps to prevent unauthorized software changes to their equipment in all of the U–NII bands. It leaves the precise methods of ensuring the integrity of the software in a radio to the manufacturer, but requires the manufacturer to document those methods in its application for equipment authorization and declines to set specific security protocol or authentication requirements at this time, so as not to hinder the development of the technology used to provide such security, or to be unduly burdensome on manufacturers.

21. The Commission acknowledges that it may have to specify more detailed security requirements at a later date as software driven radio technology develops. The Commission directed OET to provide guidance, through the Knowledge Data Base (KDB) on what types of security measures work effectively, and what types do not, as well as on the level of detail the FCC will typically need to evaluate the authorization request.

22. The Commission reiterated its observation in the *NPRM* that some radios are designed so that they can communicate directly with each other,

rather than through a control point, and thus they could function as either a ''master'' that initiates a network or as a ''client'' device within the network. The Commission also believes that it is important to ensure that client devices cannot be unlawfully reprogrammed to perform the functions of an access point. Thus, the Commission concludes that all devices that operate under the U–NII rules must be subject to the device security requirements.

23. The Commission believes the enhanced security measures will be effective, and conclude that there is no need for a reactive scheme such as disabling devices that are modified or tampered with, as urged by some commenters. The Commission intends to enforce its security protocol requirement carefully and vigorously.

24. *Transmitter ID.* The Commission declines to require U–NII devices to transmit identifying information. While the Commission's experience in the field has indicated that a transmitter ID requirement would help to more quickly identify and locate devices that cause harmful interference, the Commission is not persuaded that the benefits accrued from such a requirement would outweigh the costs to implement it at this time. One of its primary goals throughout this proceeding is to prioritize eliminating the occurrence of harmful interference in the first instance. The Commission's adoption of enhanced security requirements, directly addresses this priority, whereas a transmitter identification requirement does not. However, if harmful interference continues to be a problem the Commission will reevaluate the costs and benefits associated with a transmitter ID requirement, recognizing that it may be necessary to implement more costly solutions to eliminate the harmful interference if devices operating in the band continue to cause harmful interference.

U–NII–2 Bands

25. In addition to the security requirements applicable to all U–NII devices operating in the 5 GHz band described, the Commission revised the technical rules for operation in the U–NII–2A and U–NII–2C bands to further mitigate potential harmful interference to TDWR and other radar systems that operate in those bands. It also modified the rules and updated its U–NII compliance measurement procedures to improve testing for radar detection and eliminate certain outdated performance tests.

Interference Mitigation Techniques

26. To be certified for operation in the U–NII–2A and U–NII–2C bands, devices must include a DFS radar detection function. In its field investigations, the Commission's Enforcement Bureau found that certain models of devices certified for use in these bands were designed in a way that users were able to disable the DFS mechanism. With the DFS mechanism inactive, the device could transmit on an active radar channel and cause harmful interference. In the *NPRM* the Commission therefore proposed that manufacturers prevent the DFS mechanism from being disabled in devices certified to operate in the U–NII–2A and U–NII–2C bands. It also proposed that U–NII devices certified to operate in these bands must be operated with the DFS function on. The Commission also noted in the *NPRM* that the NTIA Third Technical Report and its own discussions with NTIA, FAA and industry representatives have identified additional techniques that could mitigate in-band and adjacent band interference to incumbents. These include increasing the sensing frequency range (*e.g.,* detection bandwidth) of U–NII devices operating in the U–NII–2A and U–NII–2C bands; using a database registration process combined with geo-location technology to determine whether there is any potential harmful interference to radar systems such as the TDWR; and limiting the unwanted emission levels of the U–NII devices.

27. *DFS Functionality.* No commenters opposed the Commission's proposal that DFS must be active for any devices operating in the U–NII–2A and U–NII–2C bands. The technical rules for equipment authorized to operate in the U–NII–2A and U–NII–2C bands already require the implementation of DFS. The requirement to preclude software changes that would allow devices to operate outside of their authorized parameters includes the DFS functionality. That is, the devices must be designed to prohibit software changes that would disable the DFS functionality. The Commission also modified its rules to explicitly prohibit operators from using equipment without operational DFS in the U–NII–2 bands, and to require the DFS function to be turned on when operating in these bands. This explicit requirement will help the Commission's Enforcement Bureau eliminate harmful interference should they encounter modified equipment in the field.

28. *DFS Sensing Bandwidth.* The Commission modified its rules to require U–NII devices to sense for radar signals at 100 percent of their emissions bandwidth in U–NII–2A and U–NII–2C bands, as proposed in the *NPRM.* The current rule for sensing bandwidth ensures co-channel interference protection only when the radar signal falls within 80 percent of the U–NII device's occupied bandwidth, and it is thus possible for the U–NII device to transmit on the same frequency as the radar when the radar signal falls within the 20 percent of occupied bandwidth that does not require sensing. This could result in transmissions from the U–NII devices that fall within the TDWR receiver bandwidth, which would increase the potential for harmful interference. Expanding the sensing requirement to the entire occupied bandwidth will prevent any and all co-channel operations between U–NII–2A, U–NII–2C band devices and radars.

29. *Geolocation/Database.* The Commission declines to adopt a geo-location database requirement that I proposed in the *NPRM* for several reasons. First, it is taking several actions in this *First R&O* that would have prevented most of the harmful interference cases that it has observed to date, and which will prevent future interference cases. Second, the Commission is making several changes to its part 15 rules and compliance measurement procedures to improve the DFS functionality, thus further reducing the harmful interference risk to TDWR and other radar systems, *e.g.* increasing the sensing bandwidth, modifying the sensing threshold, and testing DFS functions against a new radar waveform. These changes will be sufficient for U–NII devices to avoid radar systems operating in these bands. Given these considerations, the Commission agrees with commenters that the incremental benefit provided by implementing a geo-location/database approach as a supplement to DFS is not sufficient to justify the expense of doing so. Additionally, permitting a geo-location/database approach as an alternative to requiring DFS functionality would also present some practical concerns in overall management of the interference environment, since two different types of devices would be operating under different authorization procedures and operating rules.

30. The Commission notes that although it is not adopting a database requirement, WISPA maintains a database accessible to the public which contains TDWR system locations and the Commission actions in this *First R&O* will not prevent the use of any voluntary databases such as the one implemented by WISPA.

31. *Out-of-Band Emissions in the U–NII–2 Bands.* In the *NPRM,* the Commission noted that emissions outside of the U–NII device's occupied bandwidth may have the potential to cause harmful interference to TDWRs. Aside from increasing frequency separation or distance separation, U–NII devices may avoid causing harmful interference by lowering the emissions on the radar's fundamental frequency. This equates to lowering all emissions from U–NII devices at the frequencies outside of the device's operating bandwidth. The Commission sought comment on whether requiring lower unwanted emission limits for U–NII devices operating in the U–NII–2A and UNII–2C bands was appropriate, and whether it should modify the emission limits based on findings in NTIA Third Technical Report.

32. The Commission also sought comment on modifying its rules to adopt out-of-channel limits for indoor versus outdoor U–NII devices, including how it should define the terms ''indoor'' and ''outdoor,'' and how different operating requirements for indoor versus outdoor operations can be accommodated through its equipment authorization and enforcement procedures.

33. The Commission declined to adopt the proposals in the *NPRM* that would have required reductions in out-of-band emissions below the levels currently allowed under § 15.407. In the harmful interference cases that it has investigated, it has not seen evidence that problems are being caused by unwanted emissions from properly certified and properly functioning equipment. Instead, the majority of cases have been caused by devices that have been modified to operate in frequency bands in which they are not certified to operate, or by devices in which DFS had been disabled. Consolidating the technical rules in the U–NII–3 band, along with enhancing the software security requirements of all U–NII devices, would have prevented most of the harmful interference cases that has been observed to date. Accordingly, the Commission agrees with commenters that a reduction in unwanted emissions from properly certified and properly functioning equipment would be overly restrictive and would not provide any long-term interference mitigation and that the benefits of applying reduced emission limits would be speculative, while the costs imposed on manufacturers and users are real and would result in decreased equipment capabilities.

Other U–NII–2 Rules and Measurement Procedures

34. *Sensing Threshold.* The current rules require that the DFS mechanism continuously monitor the device's environment for the presence of radar, both prior to and during operation, using two detection thresholds to ascertain whether radar signals were present. The required threshold levels are: (a) −62 dBm for lower power devices with a maximum EIRP less than 200 mW (23 dBm), and (b) −64 dBm for higher power devices with a maximum EIRP between 200 mW (23 dBm) and 1 W (30 dBm), averaged over 1 μs. The difference is due to the lesser range at which the lower power devices can potentially cause harmful interference. In order to ensure that the potential for harmful interference does not increase with the use of the relaxed sensing threshold, the Commission proposed in the *NPRM* to apply a reduction in EIRP spectral density for devices that use the −62 dBm sensing threshold.

35. The Commission adopted the proposal it advanced in the NPRM to revise the DFS sensing rules by introducing a Power Spectral Density (PSD) limit for devices that meet the requirements for this relaxed sensing threshold. It modified the rules to require that devices operate with both an EIRP of less than 200 mW (23 dBm), and an EIRP spectral density of less than 10 dBm/MHz (10 mW/MHz), in order to use the relaxed sensing detection threshold of −62 dBm. Devices that do not meet the proposed EIRP and EIRP spectral density requirements must use the −64 dBm sensing threshold. The Commission also noted that a reduction in the EIRP spectral density limit would be consistent with recent actions taken by European Telecommunications Standards Institute (ETSI). Specifically, ETSI chose to restrict a device's use of the relaxed sensing threshold by reducing both the EIRP and the EIRP spectral density to 23 dBm (200 mW) and 10 dBm/MHz (10 mW/MHz), respectively. This change will further enhance protection for radars from co-channel interference by reducing both the range and the in-band spectral density of the U–NII devices that use the relaxed sensing threshold.

36. *Bin 1 Waveforms.* U–NII devices that operate in the U–NII–2A and the U–NII–2C bands are certified using a testing regime that considers how the U–NII equipment responds to sample waveforms that simulate typical parameters that are used by radars that operate in these bands. The radar parameters are divided up into several ''bins,'' each representing a different category of radar system. The Commission is adopting its proposals from the *NPRM,* to use an updated set of ''Bin-1'' radar waveforms to be used in certifying U–NII equipment. The new waveforms are expected to account for current and, to the extent possible, future TDWR characteristics, and the modifications in the Bin-1 radar simulating waveform used in its measurement procedures will reduce the potential for co-channel interference to the TDWR and other radar systems. The Commission believes that these changes will reduce the potential for co-channel interference to the TDWR and other radar systems, and directed OET to modify the Bin-1 radar simulating waveform used in the 2006 DFS Compliance Measurement Procedures. Based on the reported co-channel interference to TDWR, and its investigations into complaints, the Commission believes the modifications to the test waveforms in the measurement procedures are required. The test waveforms proposed in the *NPRM* were created by NTIA with input from a number of agencies and with the industry stakeholders after a long evaluation period. The tests are a generalized procedure and are not intended to cover every radar device exactly. In fact, all the test waveforms were created by ''mixing'' a number of radar types. Thus, they are not exact representations, but a generalized view of pulse types to be detected. In practice, a U–NII device is expected to detect any radar types and not just the parameters used for test purposes and thus, the Commission does not need to include the specific parameters requested by Baron Services.

37. *Channel Spreading.* With the support of all commenters addressing the issue, the Commission modified its rules, as proposed in the NPRM, to eliminate the last portion of § 15.407(h)(2) that requires that the DFS process provide a uniform spreading of the loading over all of the available channels, and directed OET to update the 2006 DFS Compliance Measurement Procedures to remove the channel spreading requirement. The Uniform Channel Spreading requirement on DFS is outdated and does not reflect the current state and trajectory of wireless technology, which is turning toward U–NII devices which operate with ever wider bandwidths such as contained in the new 802.11ac standard. Operation over wider bandwidths causes U–NII energy to be spread throughout the frequency band in which the device is operating, rather than concentrated in a narrow bandwidth, reducing the utility

of uniform channel-spreading requirement. This rule modification will give U–NII equipment manufacturers significant flexibility to design and develop radar avoidance methods, while increasing effective use of the spectrum.

38. *Channel Loading.* With the support of all parties that commented on channel loading, the Commission determined to remove the requirement for using the MPEG test file (streaming full motion video at 30 frames per second) for testing of channel loading. Given that there are a number of affected devices that are not designed for video use and therefore cannot be effectively tested with a video-based process, the Commission concluded that a more flexible approach is warranted, which permits channel-loading testing to be performed using means appropriate to the data types that are used by the unlicensed device at issue.

U–NII–3 Band Features

39. The Commission's rules permit the certification of devices that operate in 5.725–5.85 GHz band under two different rule sections. Section 15.247 was originally adopted in 1985 to govern spread spectrum operations. The U–NII rules were adopted in 1997 and were designed to accommodate new digital modulation technologies. In 2002, the Commission modified the original spread spectrum rules to allow digitally-modulated devices under § 15.247, but were not fully aligned with the U–NII rules. The differences in these rules has persisted and led to the situation where devices were authorized under the frequencies permitted under § 15.247 and then illegally modified to operate on frequencies permitted only for U–NII devices without complying with the rules designed to prevent interference to other radio services, resulting in harmful interference to TDWRs.

40. To provide for simplicity and clarity in the rules and to eliminate the scheme whereby unlicensed devices authorized under the unlicensed rules rather than the U–NII rules could then be (illegally) modified to operate on U–NII bands without U–NII compliance and protection protocols, the Commission adopted the *NRPM* proposals for the U–NII–3 band with one exception, it did not adopt an antenna gain limit for point-to-point devices. It adopted a single set of rules for all devices in the U–NII–3 band, it adopted the provisions from each respective rule regimen which provides for the most effective and efficient use of spectrum while protecting incumbents.

41. First, the Commission extended the upper edge of the U–NII–3 band from 5.825 GHz to 5.85 GHz to match the amount of spectrum available for digitally-modulated devices under § 15.247. Second, it consolidated § 15.247 technical rules for digitally-modulated devices in the 5.725–5.85 GHz band with § 15.407 U–NII rules, while maintaining many of the technical rules that currently make equipment authorization under § 15.247 more attractive for equipment manufacturers. It removed the 5.725–5.85 GHz band for digital modulation devices from § 15.247 to ensure that all digitally modulated equipment that are technically similar operate under a single set of technical rules in this band.

42. The Commission also adjusted the rules for technical parameters such as the frequency band of operation, the power and power spectral density limits, emission bandwidth, antenna gain, unwanted emission limits, and the peak to average ratio permitted in its rules. It adopted a modified version of its proposed rule for antenna gain to retain the provisions for high-gain point-to-point operations.

43. The Commission adopted its proposal to consolidate the provisions for operation in the 5.725–5.85 GHz band into the U–NII rules under § 15.407. It expects this rule change to decrease unnecessary complexity in the equipment authorization process and eliminate the incentives for gaming the rules. More importantly, this change, combined with the software security changes the Commission adopted, should help eliminate potential harmful interference from unlicensed devices to other spectrum users.

Power

44. Section 15.247 allows 1 Watt of total peak conducted power whereas § 15.407 limits maximum conducted output power to the lesser of 1 Watt or 17 dBm + 10 log B (where B is bandwidth in MHz). In addition to the 1 Watt power limit, there are different PSD limits in §§ 15.247 and 15.407 such that 1 Watt of total power is available only when the 6-dB bandwidth is 500 kilohertz or more under § 15.247 and when the 26-dB bandwidth is 20 megahertz or more under § 15.407. Because the Commission is trying to accommodate digitally modulated devices that are currently permitted under both rules, it proposed in the *NPRM* to remove the bandwidth dependent term (*i.e.,* remove 17 + 10 log B) from § 15.407, so that the power limit would be 1 Watt.

45. The Commission modified its rules to remove the bandwidth-dependent term from § 15.407(a)(3) of its rules, as proposed. As the Commission initially suggested and the majority of commenters agreed, utilizing the 1 Watt power limit will not increase the potential for harmful interference because unlicensed devices are already allowed to operate without the bandwidth-dependent term under § 15.247.

Power Spectral Density

46. Section 15.247(e) permits a maximum PSD of 8 dBm/3 kHz (33 dBm/MHz), whereas § 15.407(a)(3) permits a maximum PSD of 17 dBm/MHz. The difference between these two PSD limits is the bandwidth at which the device reaches the 1-Watt total power limit. Specifically, § 15.247(e) allows a higher PSD when the device emission bandwidth is between 0.5 and 20 megahertz. Whenever devices use an emission bandwidth above 20 megahertz, the 1 Watt power limit becomes the limiting parameter, and the effective PSD at which the device operates is the same under both § 15.247 and 15.407. A PSD of 8dBm/3kHz (33dBm/MHz) is equivalent to a PSD that is higher than a total power limit of 1 Watt (30dBm).

47. The Commission did not adopt the proposed PSD limit of 33dBm/MHz because it would exceed the conducted power limit of 1 Watt specified in § 15.247(b)(3), which it is incorporating into the consolidated rule; the Commission instead calculates a PSD limit that can be practically measured and would not be higher than the conducted power limit of 30 dBm. The Commission adjusts the 33 dBm/MHz proposed in the *NPRM* by simply converting the PSD into a smaller bandwidth such that the power allowed in that bandwidth does not exceed 30 dBm. The Commission modifies the PSD limit by decreasing the power by 3 dB, and at the same time reduces the bandwidth by half, making the PSD that it adopted 30 dBm/500 kHz. Assuming that emission levels are evenly distributed throughout the bandwidth, this is equivalent to the 8 dBm/3 kHz (33 dBm/MHz) that was proposed in the *NPRM*.

48. The Commission continues to believe that the 3 kilohertz measurement bandwidth is unnecessary, as it creates an exceedingly long time for labs to complete the measurements for devices that use 20 megahertz or even wider channels. With the introduction of 80 and 160 megahertz channels with the IEEE 802.11 ac standard, the time to complete a single measure would increase significantly. Because the

Commission adopted a PSD limit in a 500 kHz bandwidth, it modified the measurement procedures to correspondingly be performed using a 500 kHz reference bandwidth. Likewise, the Commission modified § 15.407(a)(5) to specify a 500 kHz reference bandwidth for the U–NII–3 band. This will allow measurements of unlicensed devices being certified for operation in the U–NII–3 band to be performed in a timely manner, resulting in efficiencies and cost savings for manufacturers, test facilities, and ultimately to consumers.

Emission Bandwidth

49. Section 15.247(a)(2) requires a minimum 6 dB bandwidth of 500 kilohertz. Section 15.407 has no minimum or maximum bandwidth, but the emission bandwidth is defined and measured at the 26 dB down points of the U–NII signal and is used to determine the total power allowed under that rule.

50. The Commission concludes that using a minimum 6 dB bandwidth of 500 kilohertz will continue to provide sufficient flexibility to foster development, frequency sharing and frequency reuse in the band, and it modified § 15.407 to include that minimum-bandwidth requirement, in order to help ensure that the band does not become congested with narrow-bandwidth applications for which other spectrum could be available.

Antenna Gain

51. Under the antenna gain requirements in § 15.247, a 1 dB reduction in power is required for every 1 dB that the antenna gain exceeds 6 dBi, except for fixed point-to-point systems, for which no power reduction is required. Under § 15.407, a 1 dB reduction in power is similarly required for every 1 dB that the antenna gain exceeds 6 dBi, but for fixed point-to-point systems, a 1 dB reduction in power is required for every 1 dB that the antenna gain exceeds 23 dBi.

52. The Commission declined to adopt its initial proposal to conform to the provisions of § 15.407 which restrict require reduced power for high-gain antennas, and instead will conform the rules for U–NII–3 devices to those presently in § 15.247 to continue to permit the use of unlicensed high-gain point-to-point antennas. This will allow service providers to deploy cost-effective wireless links in what would otherwise be considered high cost areas, and allow for the quick setup and transitioning of unlicensed and licensed microwave links.

53. The Commission finds that Fastback's proposal to permit higher antenna gain for point-to-multipoint systems would be an expansion of usage in the U–NII–3 band, and is beyond the scope of the rulemaking.

Unwanted Emissions

54. Section 15.247(d) requires 20 dB of attenuation (30 dB if the alternate measurement procedure detailed in § 15.247(b)(3) is used) for unwanted emissions. In restricted bands, emissions must meet the § 15.209 general emission limits. Section 15.407 requires unwanted emissions to be below −17 dBm/MHz within 10 megahertz of the band edge, and below −27 dBm/MHz beyond 10 megahertz of the band edge. Also, all emissions below 1 GHz must comply with the § 15.209 general emission limits. These unwanted emission limits are somewhat more restrictive than those in § 15.247.

55. The Commission adopted the more restrictive unwanted emissions limits in § 15.407 for the combined new rule, rather than the more lenient unwanted emissions limit currently in § 15.247 for several reasons. The more stringent unwanted emissions requirement will ensure that there is no increase in the potential for harmful interference from unlicensed devices operating under the new combined rule parts. Additionally, this decision is consistent with the determination to apply the § 15.407 out-of-band emission levels in the U–NII–2 bands, and having a single limit for devices that operate in any U–NII band will provide clarity and simplicity. The record shows broad support for adopting the tighter unwanted-emissions limits of § 15.407 limits. The Commission recognizes that high gain point-to-point system certified under § 15.247 may have to be modified to comply with the lower out-of-band emissions limit from § 15.407. Manufacturers have the flexibility to determine how they should meet the lower out-of-band emissions limit.

Peak-to-Average Power Ratio

56. Section 15.407 contains a requirement to maintain a peak-to-average power ratio of no more than 13 dB across any 1 megahertz band, whereas § 15.247 contain no peak-to-average ratio requirement. The Commission did not adopt the proposal in the *NPRM* to keep the peak-to-average ratio requirement, agreeing with commenters that this measurement is no longer necessary.

Hybrid Devices

57. The Commission will continue to authorize under § 15.247 frequency hopping spread spectrum devices and the frequency hopping spread spectrum portion of hybrid devices in the 5725–5850 MHz band. The digitally modulated portion of hybrid devices will have to meet the modified U–NII rules for this band.

Adoption of Miscellaneous Rule Modifications

58. The *NPRM* proposed several rule modifications to simplify and clarify various Part 15 rules. The Commission determines that several sections of the rules referenced procedures or provisions that are no longer in use and therefore, are no longer necessary and others with inconsistent terminology. In § 15.403(m) the Commission replaced ''Peak Power Spectral Density'' with ''Maximum Power Spectral Density.'' In addition, the Commission deleted ''peak or'' from § 15.403(o) for clarity. It also deleted ''peak or'' from § 15.403(o) for clarity. The Commission also deleted § 15.247(b)(4)(i) through (b)(4)(ii) to eliminate repetitive language that was found in § 15.247(c)(1)(i) through (c)(1)(iii).

59. In § 15.407 the Commission deleted the second sentence in paragraph (a)(4) because it contains language that is no longer relevant. It also corrected the wording in paragraphs (a)(2) and (a)(5) by replacing ''peak'' with ''maximum.'' The Commission also corrected the wording in paragraph (b)(8) by replacing ''block edges'' with ''band edges.'' The Commission also clarified rule § 15.215(c) to allow the operation of a U–NII device over multiple channels/bands. U–NII Band straddling in the 5 GHz region of U–NII spectrum is allowed and applies to 802.11ac bonded 80 megahertz and 160 megahertz channels. It also modified § 15.407(h)(2) to clarify the language for DFS requirements once the emission bandwidth of a U–NII device is straddled across multiple U–NII bands.

Transition Periods

60. The Commission adopted its proposal to require that 12 months after the effective date of this *First R&O,* applications for certification of devices must meet the new and modified rules adopted. The manufacture, marketing, sale and importation into the United States of devices that do not meet the new or modified rules adopted must cease two years after the effective date of this *First R&O.* While the Commission is sympathetic to the arguments that the more restrictive unwanted emission limits for digital modulation devices may present design challenges for some manufacturers, the Commission finds that it is in the public interest to implement the changes as

soon as possible to eliminate the potential of harmful interference to incumbents.

61. Grandfathered devices must continue to employ DFS as required in § 15.407(h)(2). Devices operating in the U–NII–2A or U–NII–2C bands that do not have DFS or that have DFS turned off are not compliant with the part 15 rules, and any operators who use such devices may be subject to a f forfeiture. Large numbers of 5 GHz U–NII devices are already in the marketplace and pose no threat of harmful interference unless they are modified in violation of the Commission's rules. However, should these devices be modified and cause harmful interference to TDWR or any other incumbent systems, the FCC Enforcement Bureau will continue its aggressive approach to ensuring compliance with the Commission's rules.

62. Since 2010, the Commission has been certifying U–NII–2C devices under interim procedures which require that the 5.6–5.65 GHz band be notched out, and that certain devices within 35 km of a TDWR location be separated by at least 30 MHz (center-to-center) from the TDWR operating frequency. The Commission will permit U–NII–2C, *i.e.,* devices operating in the 5470–5725 MHz band, to be certified either under these interim procedures or the new rules adopted herein for 12 months after the effective date of this *First R&O.* After 12 months, all U–NII–2C devices must meet the new rules in order to be certified.

63. The Commission adopted its proposal to no longer allow Class II permissive changes for devices certified under either the old rules, or the U–NII–2C interim procedures, after two years unless they meet the new rules adopted here. Devices may continue to apply for Class II permissive changes that demonstrate compliance with the old rules for only up to two years after the effective date of the new rules. However, the Commission feels that it is in the public interest to continue to allow indefinitely Class II permissive changes to devices certified under the old rules in some instances. The Commission will therefore allow devices certified under the old rules, or U–NII–2C interim procedures, prior to the 12-month effective date of the new rules, to demonstrate compliance with the new or modified rules through Class II permissive changes.

64. The Commission will continue to allow digital modulation equipment and the digital modulation portion of hybrid devices, *i.e.,* those that can function as either spread spectrum or digitally modulated systems, operating in the 5.725–5.85 GHz band to be certified to meet the § 15.247 requirements for 12 months after the effective date of the new rules. After 12 months, digital modulation devices and the digital modulation portion of hybrid devices must meet the new § 15.407 U–NII–3 rules in order to be FCC certified. The frequency hopping spread spectrum portion of hybrid devices will continue to be certified under the § 15.247 spread spectrum rules. The manufacture, marketing, sale and importation into the United States of digitally modulated and hybrid devices certified under § 15.247 operating in the 5.725–5.85 GHz band must cease two years after the effective date of this 1st R&O. Additionally, for up to two years after the effective date of these new rules they may apply for Class II permissive changes to demonstrate compliance with the old rules. After two years, these devices must be certified to meet the new rules and Class II permissive changes may only be made if these devices meet the new rules as well.

Procedural Matters

65. *Paperwork Reduction Analysis.* This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. This collection of information will be covered under (OMB 3060–0057 Equipment Authorization).

Final Regulatory Flexibility Analysis

66. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) in ET Docket No. 13–49.[2] The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

67. The *First Report and Order* amends the regulations for Information Unlicensed National Information Infrastructure (U–NII) devices which operate in the 5 GHz band.[3] U–NII devices are unlicensed intentional radiators which use wideband digital modulation techniques to provide a wide array of high data rate mobile and fixed communications used by individuals, businesses, and institutions.[4] As discussed, the Commission modified certain technical requirements in its rules for all U–NII devices to ensure that these devices do not cause harmful interference to Terminal Doppler Weather Radar (TDWR) systems and other radar systems that operate in the 5 GHz band. It is also extending the upper edge of the 5.725–5.825 GHz U–NII band from 5.825 GHz to 5.85 GHz and consolidating the provisions formerly applicable to digitally modulated devices under § 15.247 of the rules for this band with the U–NII rules in § 15.407. This change will eliminate a loophole in the former rules that allowed devices to be certified under the § 15.247 rules and then modified to operate as U–NII devices without complying with all of the technical requirements of the U–NII rules—a practice that was shown to be a major source of harmful interference to TDWRs. Finally, the Commission is removing the indoor only restriction and increasing the permitted power for U–NII devices in the 5.15–5.25 GHz band thus increasing the amount of spectrum available for next generation Wi-Fi services by 100 megahertz.

B. Significant Issues Raised by Public Comments in Response to the IRFA

68. There were no public comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

69. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 60–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996), and the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (2010).

[2] *See Revision of part 15 of the Commission's rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band* in ET Docket No. 13–49, *Notice of Proposed Rulemaking,* 28 FCC Rcd. 1769 (2013) (*NPRM*).

[3] *See* 47 CFR part 15 Subpart E—Unlicensed National Information Infrastructure Devices.

[4] *See* 47 CFR 15.403(s).

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

70. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act.[6] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets may additional criteria established by the Small Business Administration (SBA).[7]

E. Small Businesses, Small Organizations, and Small Governmental Jurisdictions

71. The Commission's action may, over time, affect small entities that are not easily categorized at present. It therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration.[8] As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.[9] Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[10] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[11] Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[12] Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.[13] The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.''[14] Thus, the Commission estimates that most governmental jurisdictions are small.

72. The adopted rules pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.''[15] The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.[16] According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees.[17] Thus, under this size standard, the majority of firms can be considered small.

F. Description of Projected Reporting, Record keeping and Other Compliance Requirements

73. The Report and Order contains a non-substantial modification to the information collection requirements. The rules adopted in this First Report and Order will apply to small businesses that choose to use, manufacture, design, import, or sell part 15 U–NII devices. There is no requirement, however, for any entity to use, market, or produce these types of products. Small businesses are already subject to the existing rules with regard to reporting, record keeping and other compliance requirements related to U–NII devices. The rules adopted in this First Report and Order do not add substantial additional compliance burden on small businesses.

G. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

74. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[18]

75. In this First Report and Order, the Commission modified its rules for Unlicensed National Information Infrastructure (U–NII) devices which operate in the 5 GHz band.[19] U–NII devices are unlicensed intentional radiators which use wideband digital modulation techniques to provide a wide array of high data rate mobile and fixed communications used by individuals, businesses, and institutions.[20] As discussed, the Commission is modifying certain technical requirements in its rules for all U–NII devices to ensure that these devices do not cause harmful interference to Terminal Doppler Weather Radar (TDWR) systems and other radar systems that operate in the

[5] *See* 5 U.S.C. 603(b)(3).

[6] *Id.* 601(3).

[7] *Id.* 632.

[8] *See* 5 U.S.C. 601(3)–(6).

[9] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (last visited Aug. 31, 2012).

[10] 5 U.S.C. 601(4).

[11] Independent Sector, The New Nonprofit Almanac & Desk Reference (2010).

[12] 5 U.S.C. 601(5).

[13] U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

[14] The 2007 U.S Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If the Commission assumes that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If the Commission makes the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, the Commission notes that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011—U.S. Census Bureau, *available at http://www.census.gov/popest/data/cities/totals/2011/index.html.* If the Commission subtracts the 715 cities and towns that meet or exceed the 50,000 population threshold, the Commission concludes that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

[15] U.S. Census Bureau, 2007 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/naics/2007/def/ND334220.HTM#N334220.*

[16] 13 CFR 121.201, NAICS code 334220.

[17] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[18] 5 U.S.C. 603(c).

[19] *See* 47 CFR part 15 Subpart E—Unlicensed National Information Infrastructure Devices.

[20] *See* 47 CFR 15.403(s).

5 GHz band. The Commission also extends the upper edge of the 5.725–5.825 GHz U–NII band from 5.825 GHz to 5.85 GHz and consolidates the provisions formerly applicable to digitally modulated devices under § 15.247 of the rules for this band with the U–NII rules in § 15.407. This change will eliminate a loophole in the former rules that allowed devices to be certified under the § 15.247 rules and then modified to operate as U–NII devices without complying with all of the technical requirements of the U–NII rules—a practice that was shown to be a major source of harmful interference to TDWRs. Finally, the Commission is removing the indoor only restriction and increasing the permitted power for U–NII devices in the 5.15–5.25 GHz band thus increasing the amount of spectrum available for next generation Wi-Fi services by 100 megahertz.

Report to Congress

76. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[21] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.[22]

Congressional Review Act

77. The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

78. Pursuant to sections 4(i), 301, 302, 303(e), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302a, 303(e), 303(f), 303(g), and 303(r), this First Report and Order is hereby *adopted* and parts 2 and 15 of the Commission's rules *are amended* as set forth in Final rules, effective June 2, 2014, except for § 15.407(j), which contains information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13, that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing OMB approval and the effective date of this rule.

79. The Office of Engineering and Technology is delegated authority to grant waivers of the antenna requirements adopted herein consistent with the terms of this Order.

80. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

81. The Office of Engineering and Technology shall publish, consistent with the terms of this Report and Order, measurement procedures that will be used for certifying equipment that will operate in the 5.15–5.35 GHz and 5.47–5.85 GHz bands.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, Radio.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

Final Rules

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 15 of the Code of Federal Regulations to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.1033 is amended by adding paragraph (b)(13) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * * * *

(13) Applications for certification of U–NII devices in the 5.15–5.35 GHz and the 5.47–5.85 GHz bands must include a high level operational description of the security procedures that control the radio frequency operating parameters and ensure that unauthorized modifications cannot be made.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 4. Section 15.37 is amended by adding new paragraph (h) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(h) Effective June 2, 2015 devices using digital modulation techniques in the 5725–5850 MHz bands will no longer be certified under the provisions of § 15.247. The technical requirements for obtaining certification after this date for digitally modulated devices and the digitally modulated portion of hybrid devices are found in subpart E of this part. The provisions for the frequency hopping spread spectrum portion of hybrid devices will remain in § 15.247. Effective June 2, 2016 systems using digital modulation techniques in the 5725–5850 MHz band certified under the provisions of § 15.247 may no longer be imported or marketed within the United States.

■ 5. Section 15.215 is amended by revising paragraph (c) to read as follows:

§ 15.215 Additional provisions to the general radiated emission limitations.

* * * * *

(c) Intentional radiators operating under the alternative provisions to the general emission limits, as contained in §§ 15.217 through 15.257 and in subpart E of this part, must be designed to ensure that the 20 dB bandwidth of the emission, or whatever bandwidth may otherwise be specified in the specific rule section under which the equipment operates, is contained within the frequency band designated in the rule section under which the equipment is operated. In the case of intentional radiators operating under the provisions of subpart E, the emission bandwidth may span across multiple contiguous frequency bands identified in that subpart. The requirement to contain the designated bandwidth of the emission within the specified frequency band includes the effects from frequency sweeping, frequency hopping and other modulation techniques that may be employed as well as the frequency stability of the transmitter over expected variations in temperature and supply voltage. If a frequency stability is not specified in the regulations, it is recommended that the fundamental emission be kept within at least the central 80% of the permitted band in order to minimize the possibility of out-of-band operation.

■ 6. Section 15.247 is amended by removing paragraphs (b)(4)(i), (ii) and (iii), and by revising paragraph (f) to read as follows:

[21] *See* 5 U.S.C. 801(a)(1)(A).

[22] *See* 5 U.S.C. 604(b).

§ 15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.

* * * * *

(f) For the purposes of this section, hybrid systems are those that employ a combination of both frequency hopping and digital modulation techniques. The frequency hopping operation of the hybrid system, with the direct sequence or digital modulation operation turned-off, shall have an average time of occupancy on any frequency not to exceed 0.4 seconds within a time period in seconds equal to the number of hopping frequencies employed multiplied by 0.4. The power spectral density conducted from the intentional radiator to the antenna due to the digital modulation operation of the hybrid system, with the frequency hopping operation turned off, shall not be greater than 8 dBm in any 3 kHz band during any time interval of continuous transmission.

Note to paragraph (f): The transition provisions found in § 15.37(h) will apply to hybrid devices beginning June 2, 2015.

* * * * *

■ 7. Section 15.401 is revised to read as follows:

§ 15.401 Scope.

This subpart sets out the regulations for unlicensed National Information Infrastructure (U–NII) devices operating in the 5.15–5.35 GHz, 5.47–5.725 GHz and 5.725–5.85 GHz bands.

■ 8. Section 15.403 is amended by revising paragraphs (m), (o) and (s) to read as follows:

§ 15.403 Definitions.

* * * * *

(m) *Maximum Power Spectral Density.* The maximum power spectral density is the maximum power spectral density, within the specified measurement bandwidth, within the U–NII device operating band.

* * * * *

(o) *Power Spectral Density.* The power spectral density is the total energy output per unit bandwidth from a pulse or sequence of pulses for which the transmit power is at its maximum level, divided by the total duration of the pulses. This total time does not include the time between pulses during which the transmit power is off or below its maximum level.

* * * * *

(s) *U–NII devices.* Intentional radiators operating in the frequency bands 5.15–5.35 GHz and 5.470–5.85 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.

■ 9. Section 15.407 is amended by revising paragraphs (a)(1) through (a)(5), (b) introductory text, (b)(1) through (b)(4), (b)(8), (e), and (h)(2), and removing paragraph (a)(6) and by adding new paragraph (i) and (j) to read as follows:

§ 15.407 General technical requirements.

(a) * * *

(1) For the band 5.15–5.25 GHz.

(i) For an outdoor access point operating in the band 5.15–5.25 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W provided the maximum antenna gain does not exceed 6 dBi. In addition, the maximum power spectral density shall not exceed 17 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi. The maximum e.i.r.p. at any elevation angle above 30 degrees as measured from the horizon must not exceed 125 mW (21 dBm).

(ii) For an indoor access point operating in the band 5.15–5.25 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W provided the maximum antenna gain does not exceed 6 dBi. In addition, the maximum power spectral density shall not exceed 17 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(iii) For fixed point-to-point access points operating in the band 5.15–5.25 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W. Fixed point-to-point U–NII devices may employ antennas with directional gain up to 23 dBi without any corresponding reduction in the maximum conducted output power or maximum power spectral density. For fixed point-to-point transmitters that employ a directional antenna gain greater than 23 dBi, a 1 dB reduction in maximum conducted output power and maximum power spectral density is required for each 1 dB of antenna gain in excess of 23 dBi. Fixed, point-to-point operations exclude the use of point-to-multipoint systems, omnidirectional applications, and multiple collocated transmitters transmitting the same information. The operator of the U–NII device, or if the equipment is professionally installed, the installer, is responsible for ensuring that systems employing high gain directional antennas are used exclusively for fixed, point-to-point operations.

(iv) For mobile and portable client devices in the 5.15–5.25 GHz band, the maximum conducted output power over the frequency band of operation shall not exceed 250 mW provided the maximum antenna gain does not exceed 6 dBi. In addition, the maximum power spectral density shall not exceed 11 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(2) For the 5.25–5.35 GHz and 5.47–5.725 GHz bands, the maximum conducted output power over the frequency bands of operation shall not exceed the lesser of 250 mW or 11 dBm 10 log B, where B is the 26 dB emission bandwidth in megahertz. In addition, the maximum power spectral density shall not exceed 11 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(3) For the band 5.725–5.85 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W. In addition, the maximum power spectral density shall not exceed 30 dBm in any 500-kHz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi. However, fixed point-to-point U–NII devices operating in this band may employ transmitting antennas with directional gain greater than 6 dBi without any corresponding reduction in transmitter conducted power. Fixed, point-to-point operations exclude the use of point-to-multipoint systems, omnidirectional applications, and multiple collocated transmitters transmitting the same information. The operator of the U–NII device, or if the equipment is professionally installed, the installer, is responsible for ensuring that systems employing high gain directional

antennas are used exclusively for fixed, point-to-point operations.

Note to paragraph (a)(3): The Commission strongly recommends that parties employing U–NII devices to provide critical communications services should determine if there are any nearby Government radar systems that could affect their operation.

(4) The maximum conducted output power must be measured over any interval of continuous transmission using instrumentation calibrated in terms of an rms-equivalent voltage.

(5) The maximum power spectral density is measured as a conducted emission by direct connection of a calibrated test instrument to the equipment under test. If the device cannot be connected directly, alternative techniques acceptable to the Commission may be used. Measurements in the 5.725–5.85 GHz band are made over a reference bandwidth of 500 kHz or the 26 dB emission bandwidth of the device, whichever is less. Measurements in the 5.15–5.25 GHz, 5.25–5.35 GHz, and the 5.47–5.725 GHz bands are made over a bandwidth of 1 MHz or the 26 dB emission bandwidth of the device, whichever is less. A narrower resolution bandwidth can be used, provided that the measured power is integrated over the full reference bandwidth.

(b) *Undesirable emission limits.* Except as shown in paragraph (b)(7) of this section, the maximum emissions outside of the frequency bands of operation shall be attenuated in accordance with the following limits:

(1) For transmitters operating in the 5.15–5.25 GHz band: All emissions outside of the 5.15–5.35 GHz band shall not exceed an e.i.r.p. of −27 dBm/MHz.

(2) For transmitters operating in the 5.25–5.35 GHz band: All emissions outside of the 5.15–5.35 GHz band shall not exceed an e.i.r.p. of −27 dBm/MHz.

(3) For transmitters operating in the 5.47–5.725 GHz band: All emissions outside of the 5.47–5.725 GHz band shall not exceed an e.i.r.p. of −27 dBm/MHz.

(4) For transmitters operating in the 5.725–5.85 GHz band: All emissions within the frequency range from the band edge to 10 MHz above or below the band edge shall not exceed an e.i.r.p. of −17 dBm/MHz; for frequencies 10 MHz or greater above or below the band edge, emissions shall not exceed an e.i.r.p. of −27 dBm/MHz.

* * * * *

(8) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the upper and lower frequency band edges as the design of the equipment permits.

* * * * *

(e) Within the 5.725–5.85 GHz band, the minimum 6 dB bandwidth of U–NII devices shall be at least 500 kHz.

* * * * *

(h) * * *

(2) Radar Detection Function of Dynamic Frequency Selection (DFS). U–NII devices operating with any part of its 26 dB emission bandwidth in the 5.25–5.35 GHz and 5.47–5.725 GHz bands shall employ a DFS radar detection mechanism to detect the presence of radar systems and to avoid co-channel operation with radar systems. Operators shall only use equipment with a DFS mechanism that is turned on when operating in these bands. The device must sense for radar signals at 100 percent of its emission bandwidth. The minimum DFS detection threshold for devices with a maximum e.i.r.p. of 200 mW to 1 W is −64 dBm. For devices that operate with less than 200 mW e.i.r.p. and a Power Spectral Density of less than 10 dBm in a 1 MHz band, the minimum detection threshold is −62 dBm. The detection threshold is the received power averaged over 1 microsecond referenced to a 0 dBi antenna. For the initial channel setting, the manufacturers shall be permitted to provide for either random channel selection or manual channel selection.

* * * * *

(i) *Device Security.* All U–NII devices must contain security features to protect against modification of software by unauthorized parties.

(1) Manufacturers must implement security features in any digitally modulated devices capable of operating in any of the U–NII bands, so that third parties are not able to reprogram the device to operate outside the parameters for which the device was certified. The software must prevent the user from operating the transmitter with operating frequencies, output power, modulation types or other radio frequency parameters outside those that were approved for the device. Manufacturers may use means including, but not limited to the use of a private network that allows only authenticated users to download software, electronic signatures in software or coding in hardware that is decoded by software to verify that new software can be legally loaded into a device to meet these requirements and must describe the methods in their application for equipment authorization.

(2) Manufacturers must take steps to ensure that DFS functionality cannot be disabled by the operator of the U–NII device.

(j) *Operator Filing Requirement:* Before deploying an aggregate total of more than one thousand outdoor access points within the 5.15–5.25 GHz band, parties must submit a letter to the Commission acknowledging that, should harmful interference to licensed services in this band occur, they will be required to take corrective action. Corrective actions may include reducing power, turning off devices, changing frequency bands, and/or further reducing power radiated in the vertical direction. This material shall be submitted to Laboratory Division, Office of Engineering and Technology, Federal Communications Commission, 7435 Oakland Mills Road, Columbia, MD 21046. Attn: U–NII Coordination, or via Web site at *https://www.fcc.gov/labhelp* with the SUBJECT LINE: ''U–NII–1 Filing''.

[FR Doc. 2014–09279 Filed 4–30–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140107014–4014–01]

RIN 0648–XD072

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2014 Management Measures

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

ACTION: Final rule; notice of availability of an environmental assessment.

SUMMARY: Through this final rule NMFS establishes fishery management measures for the 2014 ocean salmon fisheries off Washington, Oregon, and California and the 2015 salmon seasons opening earlier than May 1, 2015. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3–200 NM) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational

fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and inside fisheries (fisheries occurring in state internal waters). This document also announces the availability of an environmental assessment (EA) that analyzes the environmental impacts of implementing the 2014 ocean salmon management measures.

DATES: This final rule is effective from 0001 hours Pacific Daylight Time, May 1, 2014, until the effective date of the 2015 management measures, as published in the **Federal Register**. Comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures may be submitted at any time.

ADDRESSES: Copies of the documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384, and are posted on the Pacific Fishery Management Council's (Council's) Web site (*www.pcouncil.org*).

Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures, including suggestions for reducing the burden, to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070 and to Office of Management and Budget (OMB), by email at *OIRA.Submission@omb.eop.gov* or by fax at (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323, or Heidi Taylor at 562–980–4039.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a ''framework'' fishery management plan entitled the Pacific Coast Salmon Fishery Management Plan (Salmon FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register**.

The management measures for the 2014 and pre-May 2015 ocean salmon fisheries that are implemented in this final rule were recommended by the Council at its April 5 to 10, 2014, meeting.

Schedule Used To Establish 2014 Management Measures

The Council announced its annual preseason management process for the 2014 ocean salmon fisheries in the **Federal Register** on December 9, 2013 (78 FR 73850), and on the Council's Web site at (*www.pcouncil.org*). NMFS published an additional notice of opportunities to submit public comments on the 2014 ocean salmon fisheries in the **Federal Register** on February 3, 2014 (79 FR 6166). These notices announced the availability of Council documents, the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures, and instructions on how to comment on 2014 ocean salmon fisheries. The agendas for the March and April Council meetings were published in the **Federal Register** (79 FR 8940, February 14, 2014 and 79 FR 14481, March 14, 2014, respectively) and posted on the Council's Web site prior to the actual meetings.

In accordance with the Salmon FMP, the Council's Salmon Technical Team (STT) and staff economist prepared four reports for the Council, its advisors, and the public. All four reports were posted on the Council's Web site and otherwise made available to the Council, its advisors, and the public upon their completion. The first of the reports, ''Review of 2013 Ocean Salmon Fisheries,'' was prepared in February when the scientific information necessary for crafting management measures for the 2014 and pre-May 2015 ocean salmon fisheries first became available. The first report summarizes biological and socio-economic data for the 2013 ocean salmon fisheries and assesses how well the Council's 2013 management objectives were met. The second report, ''Preseason Report I Stock Abundance Analysis and Environmental Assessment Part 1 for 2014 Ocean Salmon Fishery Regulations'' (PRE I), provides the 2014 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2013 regulations and regulatory procedures were applied to the projected 2014 stock abundances. The completion of PRE I is the initial step in evaluating the full suite of preseason alternatives.

Following completion of the first two reports, the Council met in Sacramento, CA from March 8 to 13, 2014, to develop 2014 management alternatives for proposal to the public. The Council proposed three alternatives for commercial and recreational fisheries management for analysis and public comment. These alternatives consisted of various combinations of management measures designed to protect weak stocks of coho and Chinook salmon, and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, ''Preseason Report II Proposed Alternatives and Environmental Assessment Part 2 for 2014 Ocean Salmon Fishery Regulations'' (PRE II), which analyzes the effects of the proposed 2014 management alternatives.

Public hearings, sponsored by the Council, to receive testimony on the proposed alternatives were held on March 24, 2014, in Westport, WA and Coos Bay, OR; and March 25, 2013, in Santa Rosa, CA. The States of Washington, Oregon, and California sponsored meetings in various forums that also collected public testimony, which was then presented to the Council by each state's Council representative. The Council also received public testimony at both the March and April meetings and received written comments at the Council office.

The Council met from April 5 to 10, 2014, in Vancouver, WA to adopt its final 2014 recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, ''Preseason Report III Analysis of Council-Adopted Management Measures for 2014 Ocean Salmon Fisheries'' (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter and also posted them on the Council Web site (*www.pcouncil.org*).

National Environmental Policy Act

The Council's documents described above (PRE I, PRE II, and PRE III) collectively comprise the EA for this action, providing analysis of environmental and socioeconomic effects under the National Environmental Policy Act. The EA and its related Finding of No Significant Impact are posted on the NMFS West Coast Region Web site (*www.westcoast.fisheries.noaa.gov*).

Resource Status

Stocks of Concern

The need to meet ESA consultation requirements and obligations of the Pacific Salmon Treaty (PST) between the U.S. and Canada for several stocks will constrain fishing in 2014.

Fisheries south of Cape Falcon, OR are limited in 2014 primarily by the status of Sacramento River winter Chinook (SRWC) and California Coastal Chinook (CCC), which are both evolutionarily significant units (ESUs) listed under the Endangered Species Act (ESA). Fisheries north of Cape Falcon are limited primarily by Lower Columbia River (LCR) Chinook salmon and LCR coho salmon, stocks which are also listed under the ESA, and by Thompson River coho from Canada, which are managed according to the PST. At the start of the preseason planning process for the 2014 management season, NMFS provided a letter to the Council, dated March 4, 2014, summarizing its ESA consultation standards for listed species as required by the Salmon FMP. The limitations imposed in order to protect these stocks are described below. The alternatives and the Council's recommended management measures for 2014 were designed to avoid exceeding these limitations.

In 2010, NMFS consulted under ESA section 7 and provided guidance to the Council regarding the effects of Council area fisheries on SRWC. NMFS completed a biological opinion that includes a reasonable and prudent alternative (RPA) to avoid jeopardizing the continued existence of this ESU. The RPA included management-area-specific fishing season openings and closures, and minimum size limits for both commercial and recreational fisheries. It also directed NMFS to develop a second component to the RPA—an abundance-based management framework. In 2012, NMFS implemented this abundance-based framework which supplements the above management restrictions with maximum allowable impact rates that apply when abundance is low. The age-3 impact rate on SRWC in 2014 fisheries south of Point Arena is limited to a maximum of 15.4 percent.

NMFS last consulted under ESA section 7 regarding the effects of Council area fisheries on CCC in 2005. Klamath River fall Chinook (KRFC) are used as a surrogate to set limits on ocean harvest impacts on CCC. The biological opinion requires that management measures result in a KRFC age-4 ocean harvest rate of no greater than 16 percent.

In 2012, NMFS consulted under ESA section 7 and provided guidance to the Council regarding the effects of Council area fisheries on LCR Chinook salmon. NMFS completed a biological opinion that applies to fisheries beginning in 2012, concluding that the proposed fisheries, if managed consistent with the terms of the biological opinion, are not likely to jeopardize the continued existence of LCR Chinook salmon. The LCR Chinook salmon ESU is comprised of a spring component, a ''far-north'' migrating bright component, and a component of north migrating tules. The bright and tule components both have fall run timing. There are twenty-one separate populations within the tule component of this ESU. Unlike the spring or bright populations of the ESU, LCR tule populations are caught in large numbers in Council fisheries, as well as fisheries to the north and in the Columbia River. Therefore, this component of the ESU is the one most likely to constrain Council fisheries in the area north of Cape Falcon, Oregon. Under the 2012 biological opinion, NMFS uses an abundance-based management (ABM) framework to set annual exploitation rates for LCR tule Chinook salmon below Bonneville Dam. Applying the ABM framework to the 2014 preseason abundance forecast, the LCR tule exploitation rate is limited to a maximum of 41 percent.

In 2008, NMFS conducted an ESA section 7 consultation and issued a biological opinion regarding the effects of Council fisheries and fisheries in the Columbia River on LCR coho. The opinion depends on use of a harvest matrix for LCR coho. Under the matrix the allowable harvest in a given year depends on indicators of marine survival and brood year escapement. In 2014, the marine survival indicator is in the ''medium'' category, while brood year escapements for two indicator stocks are in the ''low'' and ''high'' categories. Under these circumstances, ocean salmon fisheries under the Council's jurisdiction in 2014, and commercial and recreational salmon fisheries in the mainstem Columbia River, including select area fisheries (e.g., Youngs Bay), must be managed subject to a total exploitation rate limit on LCR coho not to exceed 22.5 percent.

Interior Fraser (Thompson River) coho, a Canadian stock, continues to be depressed, remaining in the ''low'' status category under the PST; under these circumstances, the PST and Salmon FMP require a maximum 10.0 percent total U.S. exploitation rate on this stock. Thompson River and LCR coho are the coho stocks that require the most significant limitations on the 2014 ocean fisheries north of Cape Falcon.

Annual Catch Limits and Status Determination Criteria

Annual Catch Limits (ACLs) are set for two stocks: SRFC and KRFC. These stocks are indicator stocks for the Central Valley Fall Chinook complex and the Southern Oregon/Northern California Chinook complex, respectively. The Far North Migrating Coastal Chinook complex includes a group of Chinook salmon stocks that are caught primarily in fisheries north of Cape Falcon, Oregon and other fisheries that occur north of the U.S./Canada Border. No ACL is set for these stocks because they are managed according to the PST with Canada. Other Chinook salmon stocks caught in fisheries north of Cape Falcon are ESA-listed or hatchery produced, and are managed consistent with ESA consultation standards or hatchery goals. Coho stocks are either ESA-listed, hatchery produced, or managed under the PST.

ACLs for SRFC and KRFC are escapement-based, which means they establish a number of adults that must escape the fisheries to return to the spawning grounds. They are set based on the annual abundance projection and a fishing rate reduced to account for scientific uncertainty. The abundance forecasts for 2014 are described in more detail below in the ''Management Measures for 2014 Fisheries'' section of this final rule. For SRFC in 2014, the overfishing limit (OFL) is SOFL = 634,650 (projected abundance) multiplied by 1–FMSY (1–0.78) or 139,623 returning spawners. SABC is 634,350 multiplied by 1–FABC (1–0.70) (FMSY reduced for scientific uncertainty = 0.70) or 190,395. The SACL is set equal to SABC. For KRFC in 2014, SOFL is 76,952 (abundance projection) multiplied by 1–FMSY (1–0.71), or 22,316 returning spawners. SABC is 76,952 multiplied by 1–FABC (1–0.68) (FMSY reduced for scientific uncertainty = 0.68) or 24,625 returning spawners. SACL is set equal to SABC.

As explained in more detail above under ''Stocks of Concern,'' fisheries south of Cape Falcon, which are the fisheries that impact SRFC and KRFC, are constrained by impact limits necessary to protect ESA-listed salmon stocks including CCC and SRWC. For 2014, projected abundance of SRFC and KRFC, in combination with the constraints for ESA-listed stocks, are expected to result in escapements greater than required to meet the ACLs for both SRFC and KRFC.

Public Comments

The Council invited written comments on developing 2014 salmon management measures in their notice announcing public meetings and hearings (78 FR 73850, December 9, 2013). At its March meeting, the Council adopted three alternatives for 2014 salmon management measures having a range of quotas, season structure, and impacts, from the least restrictive in Alternative 1 to the most restrictive in Alternative 3. These alternatives are described in detail in Pre II. Subsequently, comments were taken at three public hearings held in March, staffed by representatives of the Council and NMFS. The Council received four written comments directly. The three public hearings were attended by a total of 45 people; 22 people provided oral comments. Comments came from individual fishers, fishing associations, fish buyers, and processors. Written and oral comments addressed the 2014 management alternatives described in PRE II, and generally expressed preferences for a specific alternative or for particular season structures. All comments were included in the Council's briefing book for their April 2014 meeting and were considered by the Council, which includes a representative from NMFS, in developing the recommended management measures transmitted to NMFS on April 21, 2014.

Comments on alternatives for fisheries north of Cape Falcon. For fisheries north of Cape Falcon, Alternative I quota levels were favored by five commercial and three recreational fishery commenters. Some commenters suggested modifications to management measures within the alternative; e.g., three commercial fishery commenters preferred to keep the area north of the Queets River open without landing limits until the quota was caught, rather than using landing limits to extend the season. Alternative III was supported by one commercial fishery commenter. Three commenters specifically favored the late season non-mark selective commercial coho fishery described in Alternative I. Two commenters would like the same opportunity in the recreational fishery.

Comments on alternatives for fisheries south of Cape Falcon. For fisheries south of Cape Falcon, Alternative I was supported by six commercial and three recreational fishery commenters, plus one recreational angling group. Alternative II for commercial fisheries was supported by two individuals and one seafood marketing group. Alternative III for commercial fisheries was supported by two commenters who identified themselves as recreational fishers. Most commenters south of Cape Falcon suggested modifications to the alternatives or commented on specific geographic areas rather than the area south of Cape Falcon as a whole.

Comments on incidental halibut retention in the commercial salmon fisheries. At its March meeting, the Council identified three alternatives for landing limits for incidentally caught halibut that are retained in the salmon troll fishery. Alternative I was favored north of Cape Falcon. Support was divided between Alternatives II and III south of Cape Falcon.

Other comments. Commercial fishers south of Cape Falcon preferred reduced landing limits to area closures. Several recreational fishers expressed concern that September quotas for commercial fisheries the California Klamath Management Zone (KMZ) were too large, and would have impacts to fisheries in 2015. North of Cape Falcon, four commercial fishery commenters requested that a procedure be established to allow to anchoring behind Destruction Island, north of Queets River (Washington marine area 3), in the event of bad weather when fishing south of Queets River (Washington marine area 2). One commenter asked for a small retention allowance of unmarked coho throughout the summer to reduce bycatch mortality in the commercial fishery. Some comments were not directly applicable to the 2014 salmon management alternatives, such as exempting commercial salmon trollers from vessel monitoring system requirements and Council action on Caspian terns and cormorants in the lower Columbia River.

The Council, including the NMFS representative, took these comments into consideration. The Council's final recommendation generally includes aspects of Alternatives I and II, while taking into account the best available scientific information and ensuring that fisheries are consistent with Endangered Species Act (ESA) consultation standards, annual catch limits (ACLs), Pacific Salmon Treaty (PST) obligations, and tribal fishing rights. These management tools assist the Council in meeting impact limits on weak stocks. The Council adopted alternative II for incidental halibut retention, to be consistent with retention limits adopted for April 2014 (79 FR 17071, March 27, 2014).

NMFS also invited comments to be submitted directly to the Council or to NMFS, via the Federal Rulemaking Portal (*www.regulations.gov*) in a proposed rule (79 FR 6166, February 3, 2014). No comments were submitted via *www.regulations.gov.*

Management Measures for 2014 Fisheries

The Council-recommended ocean harvest levels and management measures for the 2014 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the Salmon FMP, the requirements of the resource, and the socioeconomic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, U.S. obligations to Indian tribes with federally recognized fishing rights, and U.S. international obligations regarding Pacific salmon. The Council's recommended management measures also comply with NMFS ESA consultation standards and guidance, for those listed salmon species that may be affected by Council fisheries. Accordingly, NMFS has adopted the Council's recommendations.

North of Cape Falcon, the 2014 management measures for non-Indian commercial troll and recreational fisheries have increased quotas for coho and Chinook salmon, compared to 2013. Conservation constraints on Chinook salmon are largely unchanged, including the exploitation rate limit for ESA-listed LCR tule Chinook, which remains at 41 percent in 2014. Impacts in Alaskan and Canadian fisheries on Chinook salmon stocks originating north of Cape Falcon are increased relative to 2013. As discussed above, in 2014 the north of Falcon fisheries are limited by the need to protect threatened LCR coho and coho salmon from the Thompson River in Canada. ESA consultation standards for threatened Oregon Coast Natural coho also apply to these fisheries but these are not limiting in 2014. Washington coastal and Puget Sound Chinook generally migrate to the far north and are not significantly affected by ocean salmon harvests from Cape Falcon, OR, to the U.S.-Canada border. Nevertheless, ocean fisheries are structured, in combination with restricted fisheries inside Puget Sound, in order to meet ESA related conservation objectives for Puget Sound Chinook. North of Cape Alava, WA, the Council recommended a provision prohibiting retention of chum salmon in

the salmon fisheries during August and September to protect ESA listed Hood Canal summer chum. The Council has recommended such a prohibition since 2002 (67 FR 30616, May 7, 2002).

Reduced abundance forecast for KRFC in 2014 is reflected in reduced commercial fishing opportunities south of Cape Falcon in 2014. Constraints on the commercial fishery in this region include the CCC consultation standard that limits the forecast KRFC age-4 ocean harvest rate to a maximum of 16 percent and the exploitation rate limit on ESA-listed LCR tule Chinook. Commercial fisheries south of Point Arena are also constrained by the maximum allowable age-3 impact rate of 15.4 percent on ESA-listed SRWC. Recreational fisheries south of Cape Falcon will be directed primarily at Chinook salmon, with opportunity for coho limited to the area between Cape Falcon and the Oregon/California Border. The projected abundance of SRFC in 2014 is below the 2013 projection. Under the management measures in this final rule, and including anticipated in-river fishery impacts, spawning escapement for SRFC is projected at 314,715. Projected abundance for KRFC in 2014 is much lower than the very strong projections in 2012 and 2013. Under the management measures in this final rule, and including anticipated in-river fishery impacts, spawning escapement for KRFC is projected at 40,700.

The treaty-Indian commercial troll fishery quota for 2014 is 62,500 Chinook salmon in ocean management areas and Washington State Statistical Area 4B combined. This quota is higher than the 52,500 Chinook salmon quota in 2013, for the same reasons discussed above for the non-tribal fishery. The treaty-Indian commercial troll fisheries include a Chinook-directed fishery in May and June with a quota of 31,250 Chinook salmon, and an all-salmon season beginning July 1 with a 31,250 Chinook salmon sub-quota. The coho quota for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B, for the July-September period is 57,500 coho, higher than in 2013.

The Council is recommending two new provisions for 2014 fisheries, based on the recommendation of its Enforcement Consultants. In both the commercial and recreational fisheries, the Council added a specific prohibition on filleting salmon prior to landing. This prohibition will assist with the enforcement of size limits, by allowing for the determination of fish size before this is obscured by filleting. In the commercial fishery, a new provision requires that landing receipts report the number, weight, and species of salmon landed as well as the number and weight of retained halibut caught incidental to salmon fishing. This will allow for determination of whether salmon/halibut ratios are being met.

Management Measures for 2015 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, this action also establishes the 2015 fishing seasons that open earlier than May 1. The Council recommended, and NMFS concurs, that the commercial season off Oregon from Cape Falcon to the Oregon/California border, the commercial season off California from Horse Mountain to Point Arena, the recreational season off Oregon from Cape Falcon to Humbug Mountain, and the recreational season off California from Horse Mountain to the U.S./Mexico border will open in 2015 as indicated in the Season Description section of this document. At the March 2015 meeting, the Council may consider inseason recommendations to adjust the commercial and recreational seasons prior to May 1 in the areas off Oregon and California.

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2014 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard (USCG) Notice to Mariners as described in Section 6. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners. Inseason actions will also be published in the **Federal Register** as soon as practicable.

The following are the management measures recommended by the Council and approved and implemented here for 2014 and, as specified, for 2015.

Section 1. Commercial Management Measures for 2014 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada Border to Cape Falcon

May 1 through earlier of June 30 or 37,900 Chinook, no more than 12,200 of which may be caught in the area between the U.S./Canada border and the Queets River. Seven days per week (C.1). All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying Washington Department of Fish and Wildlife (WDFW) at 360–902–2739 with area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–902–2739 with area fished, total Chinook and halibut catch aboard, and destination (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). When it is projected that 28,425 Chinook have been landed overall, or 9,150 Chinook have been landed in the area between the U.S./Canada border and the Queets River, inseason action modifying the open period to five days per week and adding landing and possession limits will be considered to ensure the guideline is not exceeded. Cape Flattery, Mandatory Yelloweye Rockfish Conservation Area, and Columbia Control Zones closed (C.5). Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Under state law, vessels must report their catch on a state fish receiving ticket. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon must notify ODFW within one hour of delivery or prior to transport away from the port of landing by either calling 541–867–0300 Ext. 271 or sending notification via email to *nfalcon.trollreport@state.or.us.* Notification shall include vessel name

and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts.

July 1 through earlier of September 16 or attainment of the quota of 19,000 Chinook (C.8), no more than 8,750 of which may be caught in the area between the U.S./Canada border and the Queets River, or 35,200 marked coho, no more than 5,040 of which may be caught in the area between the U.S./Canada border and the Queets River (C.8.d). July 1 through 8, then Friday through Tuesday, July 11 through August 19 with a landing and possession limit for each open period of 60 Chinook and 40 marked coho per vessel per open period north of the Queets River or 60 Chinook and 60 marked coho per vessel per open period south of the Queets River. From August 22 through September 16, the fishery will be open Friday through Tuesday with a landing and possession limit of 20 Chinook and 50 marked coho per vessel per open period north of the Queets River or 20 Chinook and 50 marked coho per vessel per open period south of the Queets River (C.1). Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360–902–2739 with area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW at 360–902–2739 with area fished, total Chinook, coho, and halibut catch aboard, and destination (C.6). When it is projected that 14,250 Chinook have been landed overall, or 6,560 Chinook have been landed in the area between the U.S/Canada border and the Queets River, inseason action modifying the open period to five days per week and adding landing and possession limits will be considered to ensure the guideline is not exceeded. No earlier than September 1, if at least 5,000 marked coho remain on the quota, inseason action may be considered to allow non-selective coho retention (C.8). All salmon except no chum retention north of Cape Alava, Washington in August and September (C.7). Chinook minimum size limit of 28 inches total length (B, C.1). All coho must be marked except as noted above (C.8.d). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Mandatory Yelloweye Rockfish Conservation Area, Cape Flattery and Columbia Control Zones, and beginning August 9, Grays Harbor Control Zone Closed (C.5). Vessels must land and deliver their fish within 24 hours of any closure of this fishery. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point, except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. Under state law, vessels must report their catch on a state fish receiving ticket. Oregon State regulations require all fishers landing salmon into Oregon from any fishery between Leadbetter Point, Washington and Cape Falcon, Oregon must notify ODFW within one hour of delivery or prior to transport away from the port of landing by either calling 541–867–0300 Ext. 271 or sending notification via email to *nfalcon.trollreport@state.or.us.* Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts.

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

April 1 through July 31, August 6 through 29;

September 3 through October 31 (C.9.a).

Seven days per week. All salmon except coho except as listed below for September non-selective coho incidental retention (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). All vessels fishing in the area must land their fish in the State of Oregon (C.6). See gear restrictions and definitions (C.2, C.3) and Oregon State regulations for a description of special regulations at the mouth of Tillamook Bay.

Beginning September 3, no more than 65 Chinook per vessel per landing week (Wednesday through Tuesday).

• Non-selective incidental coho retention

September 3 through the earlier of the quota or September 30, retention of coho will be limited to no more than one coho for each landed Chinook with a landing week limit of no more than 20 coho per vessel if sufficient quota is available for transfer from the Cape Falcon to Humbug Mt. non-selective recreational fishery (C.8.b). Oregon State regulations require all fishers landing coho salmon from this season to notify ODFW within one hour of delivery or prior to transport away from the port of landing by calling 541–867–0300 Ext. 252. Notification shall include vessel name and number, number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

In 2015, the season will open March 15, all salmon except coho. Chinook minimum size limit of 28 inches total length. Gear restrictions same as in 2014. This opening may be modified following Council review at its March 2015 meeting.

—Humbug Mountain to Oregon/California Border (Oregon KMZ)

April 1 through May 31;

June 15 through earlier of June 30, or a 1,500 Chinook quota;

July 1 through earlier of July 31, or a 500 Chinook quota;

August 6 through earlier of August 29, or a 500 Chinook quota;

September 12 through earlier of September 27, or a 500 Chinook quota (C.9.a).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 28 inches total length (B, C.1). Prior to June 1, all fish caught in this area must be landed and delivered in the State of Oregon. June 15 through August 29 landing and possession limit of 30 Chinook per vessel per day. September 12 through 27 landing and possession limit of 20 Chinook per vessel per day. Any remaining portion of the June and/or July Chinook quotas may be transferred inseason on an impact neutral basis to the next open quota period (C.8). All vessels fishing in this area must land and deliver all fish within this area or Port Orford, within 24 hours of any closure of this fishery, and prior to fishing outside of this area. State regulations require fishers intending to transport and deliver their catch to other locations after first landing in one of these ports notify ODFW prior to transport away from the port of landing by calling 541–867–0300 Ext. 252 or sending notification via email to *KMZOR.trollreport@state.or.us*, with vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

In 2015, the season will open March 15 for all salmon except coho, with a 28-inch Chinook minimum size limit (C.1). Gear restrictions same as in 2014. This opening could be modified following Council review at its March 2015 meeting.

—Oregon/California Border to Humboldt South Jetty (California KMZ)

September 12 through earlier of September 30, or 4,000 Chinook quota (C.9.b). Five days per week, Friday through Tuesday. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). Landing and possession limit of 20 Chinook per vessel per day (C.8.g). All fish caught in this area must be landed within the area and within 24 hours of any closure of the fishery and prior to fishing outside the area (C.10). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed (C.5.e). See California State regulations for additional closures adjacent to the Smith and Klamath Rivers. When the fishery is closed between the Oregon/California border and Humbug Mountain and open to the south, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, Oregon prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival (C.6).

—Humboldt South Jetty to Horse Mountain

Closed.

—Horse Mountain to Point Arena (Fort Bragg)

June 19 through 30;
July 15 through 31;
August 1 through 29;
September 1 through 30 (C.9.b).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). All fish must be landed in California and offloaded within 24 hours of the August 29 closure (C.6). When the California KMZ fishery is open, all fish caught in the area must be landed south of Horse Mountain (C.6). During September, all fish must be landed north of Point Arena (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

In 2015, the season will open April 16 through 30 for all salmon except coho, with a 27-inch Chinook minimum size limit and the same gear restrictions as in 2014. All fish caught in the area must be landed in the area. This opening could be modified following Council review at its March 2015 meeting.

—Point Arena to Pigeon Point (San Francisco)

May 1 through 31;
June 1 through 30;
July 15 through 31;
August 1 through 29;
September 1 through 30 (C.9.b).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length prior to September 1, 26 inches thereafter (B, C.1). All fish must be landed in California and offloaded within 24 hours of the August 29 closure (C.6). During September, all fish must be landed south of Point Arena (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

• Point Reyes to Point San Pedro (Fall Area Target Zone) October 1 through 3, 6 through 10, and 13 through 15.

All salmon except coho (C.4, C.7). Chinook minimum size limit of 26 inches total length (B, C.1). All fish caught in this area must be landed between Point Arena and Pigeon Point (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

—Pigeon Point to U.S./Mexico Border (Monterey)

May 1 through 31;
June 1 through 30;
July 15 through 31;
August 1 through 13 (C.9.b).

Seven days per week. All salmon except coho (C.4, C.7). Chinook minimum size limit of 27 inches total length (B, C.1). All fish must be landed in California and offloaded within 24 hours of August 29 (C.6). See compliance requirements (C.1) and gear restrictions and definitions (C.2, C.3).

California State regulations require that all salmon be made available to a California Department of Fish and Wildlife (CDFW) representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Fish and Game Code § 8226).

B. Minimum Size (Inches) (See C.1)

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon, OR	28.0	21.5	16.0	12.0	None.
Cape Falcon to OR/CA Border	28.0	21.5	16.0	12.0	None.
OR/CA Border to Humboldt South Jetty	27.0	20.5	.....	.....	None.
Horse Mountain to Point Arena	27.0	20.5	.....	.....	None.
Point Arena to U.S./Mexico Border:					
Prior to Sept. 1	27.0	20.5	.....	.....	None.
Sept. 1 to Oct. 15	26.0	19.5	.....	.....	None.

Metric equivalents: 28.0 in=71.1 cm, 27.0 in=68.6 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 20.5 in=52.1 cm, 19.5 in=49.5 cm, 16.0 in=40.6 cm, and 12.0 in=30.5 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size or Other Special Restrictions

All salmon on board a vessel must meet the minimum size, landing/possession limit, or other special requirements for the area being fished and the area in which they are landed if the area is open or has been closed less than 96 hours for that species of salmon. Salmon may be landed in an area that has been closed for a species of salmon more than 96 hours only if the salmon meet the minimum size, landing/possession limit, or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Any person who is required by applicable state law to report a salmon landing state law must include on the state landing receipt for that landing both the number and weight of salmon landed by species. States may require fish landing/receiving tickets to be kept on board the vessel for 90 days after landing to account for all previous salmon landings.

C.2. Gear Restrictions

a. Salmon may be taken only by hook and line using single point, single shank, barbless hooks.

b. Cape Falcon, Oregon, to the Oregon/California border: No more than 4 spreads are allowed per line.

c. Oregon/California border to U.S./Mexico border: No more than 6 lines are allowed per vessel, and barbless circle hooks are required when fishing with bait by any means other than trolling.

C.3. Gear Definitions

Trolling defined: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

Troll fishing gear defined: One or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Spread defined: A single leader connected to an individual lure and/or bait.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Vessel Operation in Closed Areas With Salmon on Board

a. Except as provided under C.4.b below, it is unlawful for a vessel to have troll or recreational gear in the water while in any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species, and no salmon are in possession.

b. When Genetic Stock Identification (GSI) samples will be collected in an area closed to commercial salmon fishing, the scientific research permit holder shall notify NOAA Office of Law Enforcement, USCG, CDFW, and Oregon State Patrol at least 24 hours prior to sampling and provide the following information: the vessel name, date, location, and time collection activities will be done. Any vessel collecting GSI samples in a closed area shall not possess any salmon other than those from which GSI samples are being collected. Salmon caught for collection of GSI samples must be immediately released in good condition after collection of samples.

C.5. Control Zone Definitions

a. Cape Flattery Control Zone—The area from Cape Flattery (48°23′00″ N. lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava (48°10′00″ N. lat.) and east of 125°05′00″ W. long.

b. Mandatory Yelloweye Rockfish Conservation Area—The area in Washington Marine Catch Area 3 from 48°00.00′ N. lat.; 125°14.00′ W. long. to 48°02.00′ N. lat.; 125°14.00′ W. long. to 48°02.00′ N. lat.; 125°16.50′ W. long. to 48°00.00′ N. lat.; 125°16.50′ W. long. and connecting back to 48°00.00′ N. lat.; 125°14.00′ W. long.

c. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N. lat., 124°07′01″ W. long.) to Buoy #2 (46°52′42″ N. lat., 124°12′42″ W. long.) to Buoy #3 (46°55′00″ N. lat., 124°14′48″ W. long.) to the Grays Harbor north jetty (46°55′36″ N. lat., 124°10′51″ W. long.).

d. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately six nautical miles north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles off shore); and on the south, by 41°26′48″ N. lat. (approximately six nautical miles south of the Klamath River mouth).

C.6. Notification When Unsafe Conditions Prevent Compliance With Regulations

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the USCG and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, the estimated time of arrival, and the specific reason the vessel is not able to meet special management area landing restrictions.

In addition to contacting the USCG, vessels fishing south of the Oregon/California border must notify CDFW within one hour of leaving the management area by calling 800–889–8346 and providing the same information as reported to the USCG. All salmon must be offloaded within 24 hours of reaching port.

C.7. Incidental Halibut Harvest

During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. When halibut are caught and landed incidental to commercial salmon fishing by an IPHC license holder, any person who is required to report the salmon landing by applicable state law must include on the state landing receipt for that landing both the number of halibut landed, and the total dressed, head-on weight of halibut landed, in pounds, as well as the number and species of salmon landed.

License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (IPHC) (phone: 206–634–1838). Applicants must apply prior to mid-March 2015 for 2015 permits (exact date to be set by the IPHC in early 2015). Incidental harvest is authorized only during April, May, and June of the 2014 troll seasons and after June 30 in 2014 if quota remains and if announced on the NMFS hotline (phone: 1–800–662–9825 or 206–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the 29,671 pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

May 1, 2014, through December 31, 2014, and April 1–30, 2015, license holders may land or possess no more than one Pacific halibut per each four Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 12 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

Incidental Pacific halibut catch regulations in the commercial salmon

troll fishery adopted for 2014, prior to any 2014 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2015, unless otherwise modified by inseason action at the March 2015 Council meeting.

A ''C-shaped'' yelloweye rockfish conservation area (YRCA) is an area to be voluntarily avoided for salmon trolling. NMFS and the Council request salmon trollers voluntarily avoid this area in order to protect yelloweye rockfish. The area is defined in Pacific coast groundfish regulations (50 CFR 660.70(a)) in the North Coast subarea (Washington marine area 3), with the following coordinates in the order listed:

48°18′ N. lat.; 125°18′ W. long.;
48°18′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 124°59′ W. long.;
48°11′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 125°11′ W. long.;
48°04′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 124°59′ W. long.;
48°00′ N. lat.; 125°18′ W. long.;
and connecting back to 48°18′ N. lat.; 125°18′ W. long.

C.8. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June non-Indian commercial troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline, if the transfer would not result in exceeding preseason impact expectations on any stocks.

b. If at least 35,000 coho are available for the recreational non-selective coho salmon season quota between Cape Falcon and Humbug Mountain (combined initial quota and impact neutral rollover from the recreational selective coho fishery between Cape Falcon and the Oregon/California Border) consideration will be made to transfer a portion of the remaining coho that are in excess of those needed to meet the recreational objectives to the commercial troll season between Cape Falcon and Humbug Mountain. Landing week limits and coho per Chinook ratios may be adjusted inseason.

c. Chinook remaining from the June and/or July non-Indian commercial troll quotas in the Oregon KMZ may be transferred to the Chinook quota for the next open period if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. NMFS may transfer fish between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the areas' representatives on the Salmon Advisory Subpanel (SAS), and if the transfer would not result in exceeding the preseason impact expectations on any stocks.

e. At the March 2015 meeting, the Council will consider inseason recommendations for special regulations for any experimental fisheries (proposals must meet Council protocol and be received in November 2014).

f. If retention of unmarked coho is permitted by inseason action, the allowable coho quota will be adjusted to ensure preseason projected impacts on all stocks are not exceeded.

g. Landing limits may be modified inseason to sustain season length and keep harvest within overall quotas.

C.9. State Waters Fisheries

Consistent with Council management objectives:

a. The State of Oregon may establish additional late-season fisheries in state waters.

b. The State of California may establish limited fisheries in selected state waters.

Check state regulations for details.

C.10. For the Purposes of California Fish and Game Code, Section 8232.5, the Definition of the Klamath Management Zone (KMZ) for the Ocean Salmon Season Is the Area From Humbug Mountain, Oregon, to Horse Mountain, California

Section 2. Recreational Management Measures for 2014 Ocean Salmon Fisheries

Parts A, B, and C of this section contain restrictions that must be followed for lawful participation in the fishery. Part A identifies each fishing area and provides the geographic boundaries from north to south, the open seasons for the area, the salmon species allowed to be caught during the seasons, and any other special restrictions effective in the area. Part B specifies minimum size limits. Part C specifies special requirements, definitions, restrictions and exceptions.

A. Season Description

North of Cape Falcon, OR

—U.S./Canada Border to Queets River

May 16 through 17, May 23 through 24, and May 31 through June 13 or a coastwide marked Chinook quota of 9,000 (C.5).

Seven days per week. Two fish per day, all salmon except coho, all Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—Queets River to Leadbetter Point

May 31 through earlier of June 13 or a coastwide marked Chinook quota of 9,000 (C.5).

Seven days per week. Two fish per day, all salmon except coho, all Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—Leadbetter Point to Cape Falcon

May 31 through earlier of June 13 or a coastwide marked Chinook quota of 9,000 (C.5).

Seven days per week. Two fish per day, all salmon except coho, all Chinook must be marked with a healed adipose fin clip (C.1). Chinook 24-inch total length minimum size limit (B). See gear restrictions and definitions (C.2). Inseason management may be used to sustain season length and keep harvest within the overall Chinook recreational TAC for north of Cape Falcon (C.5).

—U.S./Canada Border to Cape Alava (Neah Bay)

June 14 through earlier of September 21 or 19,220 marked coho subarea quota with a subarea guideline of 7,000 Chinook (C.5).

Seven days per week. All salmon except no chum beginning August 1; two fish per day. All coho must be marked with a healed adipose fin clip (B, C.1). Beginning August 1, Chinook non-retention east of the Bonilla-Tatoosh line (C.4.a) during Council managed ocean fishery. See gear restrictions and definitions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Cape Alava to Queets River (La Push Subarea)

June 14 through earlier of September 21 or 4,750 marked coho subarea quota with a subarea guideline of 2,350 Chinook (C.5).

September 27 through earlier of October 12 or 50 marked coho quota or 50 Chinook quota (C.5) in the area north of 47°50′00″ N. lat. and south of 48°00′00″ N. lat.

Seven days per week. All salmon; two fish per day. All coho must be marked

with a healed adipose fin clip (B, C.1). See gear restrictions (C.2, C.3). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Queets River to Leadbetter Point (Westport Subarea)

June 14 through earlier of September 30 or 68,380 marked coho subarea quota with a subarea guideline of 27,600 Chinook (C.5).

Seven days per week. All salmon; two fish per day, no more than one of which can be a Chinook. All coho must be marked with a healed adipose fin clip (B, C.1). See gear restrictions and definitions (C.2, C.3). Grays Harbor Control Zone closed beginning August 11 (C.4). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

—Leadbetter Point to Cape Falcon (Columbia River Subarea)

June 14 through earlier of September 30 or 92,400 marked coho subarea quota with a subarea guideline of 13,100 Chinook (C.5).

Seven days per week. All salmon; two fish per day, no more than one of which can be a Chinook (B, C.1). All coho must be marked with a healed adipose fin clip (C.1). See gear restrictions and definitions (C.2, C.3). Columbia Control Zone closed (C.4). Inseason management may be used to sustain season length and keep harvest within the overall Chinook and coho recreational TACs for north of Cape Falcon (C.5).

South of Cape Falcon, OR

—Cape Falcon to Humbug Mountain

March 15 through October 31 (C.6), except as provided below during the all-salmon mark-selective and non-mark-selective coho fisheries.

Seven days per week. All salmon except coho; two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

• Non-mark-selective coho fishery: August 30 through the earlier of September 30 or a landed catch of 20,000 non-mark-selective coho quota (C.5).

All salmon, two fish per day (C.5).

The all salmon except coho season reopens the earlier of October 1 or attainment of the coho quota (C.5).

In 2015, the season between Cape Falcon and Humbug Mountain will open March 15 for all salmon except coho, two fish per day (B, C.1, C.2, C.3).

Fishing in the Stonewall Bank yelloweye rockfish conservation area restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 or 206–526–6667 for specific dates) (C.3.b, C.4.d).

—Cape Falcon to Oregon/California Border

All-salmon mark-selective coho fishery: June 21 through earlier of August 10 or a landed catch of 80,000 marked coho.

Seven days per week. All salmon, two fish per day. All retained coho must be marked with a healed adipose fin clip (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3). Any remainder of the mark-selective coho quota will be transferred on an impact neutral basis to the September non-selective coho quota from Cape Falcon to Humbug Mountain (C.5). The all salmon except coho season reopens the earlier of August 11 or attainment of the coho quota (C.5).

Fishing in the Stonewall Bank yelloweye rockfish conservation area restricted to trolling only on days the all depth recreational halibut fishery is open (call the halibut fishing hotline 1–800–662–9825 or 206–526–6667 for specific dates) (C.3.b, C.4.d).

—Humbug Mountain to Oregon/California Border (Oregon KMZ)

May 10 through September 7, except as provided above during the all-salmon mark-selective coho fishery (C.6).

All salmon except coho, except as noted above in the all-salmon mark-selective coho fishery. Seven days per week, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

—Oregon/California Border to Horse Mountain (California KMZ)

May 10 through September 7 (C.6).

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3). Klamath Control Zone closed in August (C.4.e). See California State regulations for additional closures adjacent to the Smith, Eel, and Klamath Rivers.

—Horse Mountain to Point Arena (Fort Bragg)

April 5 through November 9.

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2015, season opens April 4 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 20 inches total length (B); and the same gear restrictions as in 2014 (C.2, C.3).

—Point Arena to Pigeon Point (San Francisco)

April 5 through November 9.

Open seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length through June 30; 20 inches thereafter (B). See gear restrictions and definitions (C.2, C.3).

In 2015, season opens April 4 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2014 (C.2, C.3).

—Pigeon Point to U.S./Mexico Border (Monterey)

April 5 through October 5.

Seven days per week. All salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B). See gear restrictions and definitions (C.2, C.3).

In 2015, season opens April 4 for all salmon except coho, two fish per day (C.1). Chinook minimum size limit of 24 inches total length (B); and the same gear restrictions as in 2014 (C.2, C.3). This opening could be modified following Council review at its March 2015 meeting.

California State regulations require that all salmon be made available to a CDFW representative for sampling immediately at port of landing. Any person in possession of a salmon with a missing adipose fin, upon request by an authorized agent or employee of the CDFW, shall immediately relinquish the head of the salmon to the state (California Fish and Game Code § 8226).

B. Minimum Size (Total Length in Inches) (See C.1)

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None
Cape Falcon to Humbug Mountain	24.0	16.0	None
Humbug Mt. to OR/CA Border	24.0	16.0	None

Area (when open)	Chinook	Coho	Pink
OR/CA Border to Horse Mountain	20.0		24.0
Horse Mountain to Point Arena	20.0		20.0
Point Arena to Pigeon Point:			
April 5 to June 30	24.0		24.0
June 30 to November 9	20.0		20.0
Pigeon Point to U.S./Mexico Border	24.0		24.0

Metric equivalents: 24.0 in=61.0 cm, 20.0 in=50.8 cm, and 16.0in=40.6 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. Compliance With Minimum Size and Other Special Restrictions

All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught. Salmon may not be filleted prior to landing.

Ocean Boat Limits: Off the coast of Washington, Oregon, and California, each fisher aboard a vessel may continue to use angling gear until the combined daily limits of Chinook and coho salmon for all licensed and juvenile anglers aboard have been attained (additional state restrictions may apply).

C.2. Gear Restrictions

Salmon may be taken only by hook and line using barbless hooks. All persons fishing for salmon, and all persons fishing from a boat with salmon on board, must meet the gear restrictions listed below for specific areas or seasons.

a. U.S./Canada Border to Point Conception, California: No more than one rod may be used per angler; and no more than two single point, single shank barbless hooks are required for all fishing gear. [Note: ODFW regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.]

b. Horse Mountain, California, to Point Conception, California: Single point, single shank, barbless circle hooks (see gear definitions below) are required when fishing with bait by any means other than trolling, and no more than two such hooks shall be used. When angling with two hooks, the distance between the hooks must not exceed five inches when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

C.3. Gear Definitions

a. *Recreational fishing gear defined:* Off Oregon and Washington, angling tackle consists of a single line that must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. Off California, the line must be attached to a rod and reel held by hand or closely attended; weights directly attached to a line may not exceed four pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon, and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity which can reasonably be expected to result in the catching, taking, or harvesting of fish.

b. *Trolling defined:* Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

c. *Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

C.4. Control Zone Definitions

a. The Bonilla-Tatoosh Line—A line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N. lat., 124°44′12″ W. long.) to the buoy adjacent to Duntze Rock (48°24′37″ N. lat., 124°44′37″ W. long.), then in a straight line to Bonilla Point (48°35′39″ N. lat., 124°42′58″ W. long.) on Vancouver Island, British Columbia.

b. Grays Harbor Control Zone—The area defined by a line drawn from the Westport Lighthouse (46°53′18″ N. lat., 124°07′01″ W. long.) to Buoy #2 (46°52′42″ N. lat., 124°12′42″ W. long.) to Buoy #3 (46°55′00″ N. lat., 124°14′48″ W. long.) to the Grays Harbor north jetty (46°55′36″ N. lat., 124°10′51″ W. long.).

c. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

d. Stonewall Bank yelloweye rockfish conservation area—The area defined by the following coordinates in the order listed:

44°37.46′ N. lat.; 124°24.92′ W. long.;
44°37.46′ N. lat.; 124°23.63′ W. long.;
44°28.71′ N. lat.; 124°21.80′ W. long.;
44°28.71′ N. lat.; 124°24.10′ W. long.;
44°31.42′ N. lat.; 124°25.47′ W. long.;
and connecting back to 44°37.46′ N. lat.; 124°24.92′ W. long.

e. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately six nautical miles north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles south of the Klamath River mouth).

C.5. Inseason Management

Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Actions could include modifications to bag limits, or days open to fishing, and extensions or reductions in areas open to fishing.

b. Coho may be transferred inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with

representatives of the affected ports and the Council's SAS recreational representatives north of Cape Falcon, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

c. Chinook and coho may be transferred between the recreational and commercial fisheries north of Cape Falcon if there is agreement among the representatives of the SAS, and if the transfer would not result in exceeding preseason impact expectations on any stocks.

d. Fishery managers may consider inseason action modifying regulations restricting retention of unmarked coho. To remain consistent with preseason expectations, any inseason action shall consider, if significant, the difference between observed and preseason forecasted mark rates. Such a consideration may also include a change in bag limit of two salmon, no more than one of which may be a coho.

e. Marked coho remaining from the Cape Falcon to Oregon/California border recreational mark-selective coho quota may be transferred inseason to the Cape Falcon to Humbug Mountain non-mark-selective recreational fishery if the transfer would not result in exceeding preseason impact expectations on any stocks.

C.6. Additional Seasons in State Territorial Waters

Consistent with Council management objectives, the States of Washington, Oregon, and California may establish limited seasons in state waters. Check state regulations for details.

Section 3. Treaty Indian Management Measures for 2014 Ocean Salmon Fisheries

Parts A, B, and C of this section contain requirements that must be followed for lawful participation in the fishery.

A. Season Descriptions

May 1 through the earlier of June 30 or 31,250 Chinook quota. All salmon except coho. If the Chinook quota is exceeded, the excess will be deducted from the later all-salmon season (C.5). See size limit (B) and other restrictions (C).

July 1 through the earlier of September 15, or 31,250 preseason Chinook quota (C.5), or 57,500 coho quota. All salmon. See size limit (B) and other restrictions (C).

B. Minimum Size (Inches)

Area (when open)	Chinook		Coho		Pink
	Total	Head-off	Total	Head-off	
North of Cape Falcon	24.0	18.0	16.0	12.0	None.

Metric equivalents: 24.0 in=61.0 cm, 18.0 in=45.7 cm, 16.0in=40.6 cm, and 12.0 in=30.5 cm.

C. Special Requirements, Restrictions, and Exceptions

C.1. Tribe and Area Boundaries

All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

S'KLALLAM—Washington State Statistical Area 4B (All).

MAKAH—Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.

QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.

HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.

QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.

C.2. Gear Restrictions

a. Single point, single shank, barbless hooks are required in all fisheries.

b. No more than eight fixed lines per boat.

c. No more than four hand held lines per person in the Makah area fishery (Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.).

C.3. Quotas

a. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 15.

b. The Quileute Tribe will continue a ceremonial and subsistence fishery during the time frame of September 15 through October 15 in the same manner as in 2004 through 2013. Fish taken during this fishery are to be counted against treaty troll quotas established for the 2014 season (estimated harvest during the October ceremonial and subsistence fishery: 100 Chinook; 200 coho).

C.4. Area Closures

a. The area within a six nautical mile radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing.

b. A closure within two nautical miles of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.5. Inseason Management

In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance applies:

a. Chinook remaining from the May through June treaty-Indian ocean troll harvest guideline north of Cape Falcon may be transferred to the July through September harvest guideline on a fishery impact equivalent basis.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery, which appear at 50 CFR part 300, subpart E. On April 4, 2014, NMFS published a final rule (79 FR 18827) to implement the IPHC's recommendations, to announce fishery regulations for U.S. waters off Alaska and fishery regulations for treaty commercial and ceremonial and subsistence fisheries, some regulations for non-treaty commercial fisheries for U.S. waters off the West Coast, and approval of and implementation of the Area 2A Pacific halibut Catch Sharing Plan and the Area 2A management measures for 2014. The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate IPHC license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual

salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by the IPHC, and implemented by NMFS. During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.28 cm) in total length, measured from the tip of the lower jaw with the mouth closed to the extreme end of the middle of the tail, and must be landed with the head on. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (IPHC) (phone: 206–634–1838).

License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (IPHC) (phone: 206–634–1838). Applicants must apply prior to mid-March 2015 for 2015 permits (exact date to be set by the IPHC in early 2015). Incidental harvest is authorized only during April, May, and June of the 2014 troll seasons and after June 30 in 2014 if quota remains and if announced on the NMFS hotline (phone: 1–800–662–9825 or 206–526–6667). WDFW, ODFW, and CDFW will monitor landings. If the landings are projected to exceed the 29,671-pound preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to prohibit retention of halibut in the non-Indian salmon troll fishery.

May 1, 2014, through December 31, 2014, and April 1–30, 2015, license holders may land or possess no more than one Pacific halibut per each four Chinook, except one Pacific halibut may be possessed or landed without meeting the ratio requirement, and no more than 12 halibut may be possessed or landed per trip. Pacific halibut retained must be no less than 32 inches in total length (with head on).

Incidental Pacific halibut catch regulations in the commercial salmon troll fishery adopted for 2014, prior to any 2014 inseason action, will be in effect when incidental Pacific halibut retention opens on April 1, 2015, unless otherwise modified by inseason action at the March 2015 Council meeting.

NMFS and the Council request that salmon trollers voluntarily avoid a ''C-shaped'' YRCA (also known as the Salmon Troll YRCA) in order to protect yelloweye rockfish. Coordinates for the Salmon Troll YRCA are defined at 50 CFR 660.70(a) in the North Coast subarea (Washington marine area 3). See Section 1.C.7. in this document for the coordinates.

Section 5. Geographical Landmarks

Wherever the words ''nautical miles off shore'' are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery, WA	48°23′00″ N. lat.
Cape Alava, WA	48°10′00″ N. lat.
Queets River, WA	47°31′42″ N. lat.
Leadbetter Point, WA	46°38′10″ N. lat.
Cape Falcon, OR	45°46′00″ N. lat.
Florence South Jetty, OR	44°00′54″ N. lat.
Humbug Mountain, OR	42°40′30″ N. lat.
Oregon-California Border	42°00′00″ N. lat.
Humboldt South Jetty, CA	40°45′53″ N. lat.
Horse Mountain, CA	40°05′00″ N. lat.
Point Arena, CA	38°57′30″ N. lat.
Point Reyes, CA	37°59′44″ N. lat.
Point San Pedro, CA	37°35′40″ N. lat.
Pigeon Point, CA	37°11′00″ N. lat.
Point Sur, CA	36°18′00″ N. lat.
Point Conception, CA	34°27′00″ N. lat.

Section 6. Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, 1–800–662–9825 or 206–526–6667, and by USCG Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This final rule is necessary for conservation and management of Pacific coast salmon stocks and is consistent with the Magnuson-Stevens Act and other applicable law. These regulations are being promulgated under the authority of 16 U.S.C. 1855(d) and 16 U.S.C. 773(c).

This notification of annual management measures is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(b)(3)(B), to waive the requirement for prior notice and opportunity for public comment, as such procedures are impracticable and contrary to the public interest.

The annual salmon management cycle begins May 1 and continues through April 30 of the following year. May 1 was chosen because the pre-May harvests constitute a relatively small portion of the annual catch. The time frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from the previous year's observed spawning escapement, vary substantially from year to year, and are not available until January or February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a 2-month period culminating with the April Council meeting at which the Council adopts a recommendation that is forwarded to NMFS for review, approval, and implementation of fishing regulations effective on May 1.

Providing opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process

would require 30 to 60 days in addition to the 2-month period required for development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days would require that fishing regulations for May and June be set in the previous year, without the benefit of information regarding current stock status. For the 2014 fishing regulations, the current stock status was not available to the Council until February. Because a substantial amount of fishing occurs during May and June, managing the fishery with measures developed using the prior year's data could have significant adverse effects on the managed stocks, including ESA-listed stocks. Although salmon fisheries that open prior to May are managed under the prior year's measures, as modified by the Council at its March meeting, relatively little harvest occurs during that period (e.g., on average, less than 5 percent of commercial and recreational harvest occurred prior to May 1 during the years 2001 through 2013). Allowing the much more substantial harvest levels normally associated with the May and June salmon seasons to be promulgated under the prior year's regulations would impair NMFS' ability to protect weak and ESA-listed salmon stocks, and to provide harvest opportunity where appropriate. The choice of May 1 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the Salmon FMP and the need to manage the fishery using the best available scientific information.

If these measures are not in place on May 1, the 2013 management measures will continue to apply in most areas. This would result in excessive impacts to some salmon stocks, including KRFC and ESA-listed California Coastal Chinook salmon.

Overall, the annual population dynamics of the various salmon stocks require managers to vary the season structure of the various West Coast area fisheries to both protect weaker stocks and give fishers access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks, or result in foregone opportunity to harvest stocks whose abundance has increased relative to the previous year thereby undermining the purpose of this agency action.

In addition, public comment is received and considered by the Council and NMFS throughout the process of developing these management measures. As described above, the Council takes comment at its March and April meetings, and hears summaries of comments received at public meetings held between the March and April meetings in each of the coastal states. NMFS also invited comments in a notice published prior to the March Council meeting, and considered comments received by the Council through its representative on the Council. Thus, these measures were developed with significant public input.

Based upon the above-described need to have these measures effective on May 1 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1, NMFS has concluded it is impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(3)(B).

The Assistant Administrator for Fisheries also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, data are not available until February and management measures are not finalized until mid-April. These measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. Delaying the effectiveness of these measures by 30 days could compromise the ability of some stocks to attain their conservation objectives, preclude harvest opportunity, and negatively impact anticipated international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action and the requirements of the Magnuson-Stevens Act.

To enhance the fishing industry's notification of these new measures, and to minimize the burden on the regulated community required to comply with the new regulations, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and is posting the regulations on its West Coast Region Web site (*http://www.westcoast.fisheries.noaa.gov*). NMFS is also advising the States of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office of Management and Budget (OMB) under control number 0648–0433. The public reporting burden for providing notifications if landing area restrictions cannot be met is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA.Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS has current ESA biological opinions that cover fishing under these regulations on all listed salmon species. NMFS reiterated their consultation standards for all ESA listed salmon and steelhead species in their annual Guidance letter to the Council dated March 4, 2014. Some of NMFS past biological opinions have found no jeopardy, and others have found jeopardy, but provided reasonable and prudent alternatives to avoid jeopardy. The management measures for 2014 are consistent with the biological opinions that found no jeopardy, and with the reasonable and prudent alternatives in the jeopardy biological opinions. The Council's recommended management measures therefore comply with NMFS' consultation standards and guidance for all listed salmon species which may be affected by Council fisheries. In some cases, the recommended measures are more restrictive than NMFS' ESA requirements.

In 2009, NMFS consulted on the effects of fishing under the Salmon FMP on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW. The 2014 salmon management measures are consistent with the terms of that biological opinion.

This final rule was developed after meaningful consultation and collaboration with the affected tribes. The tribal representative on the Council made the motion for the regulations that apply to the tribal fisheries.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: April 28, 2014.

Samuel D. Rauch III,

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

[FR Doc. 2014–10068 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 84
Thursday, May 1, 2014

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket Nos. PRM–51–31; NRC–2014–0055]

Environmental Impacts of Spent Fuel Storage During Reactor Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; acceptance and docketing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking from Diane Curran on behalf of 34 Environmental Organizations (the petitioner), dated February 18, 2014. The petitioner requests that the NRC revise its regulations and consider, in all pending and future reactor licensing and re-licensing decisions, new and significant information bearing on the environmental impacts of high-density spent fuel storage in reactor pools and the costs and benefits for avoiding or mitigating those impacts. The NRC is not instituting a public comment period for this petition for rulemaking (PRM) at this time.

DATES: The PRM is available on May 1, 2014.

ADDRESSES: Please refer to Docket ID NRC–2014–0055 when contacting the NRC about the availability of information for this petition. You may access publicly-available information related to this petition by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0055. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer Tobin, Office of Nuclear Reactor Regulation, telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. The Petitioner

Diane Curran, Harmon, Curran, Spielberg & Eisenberg, L.L.P., on behalf of 34 Environmental Organizations submitted a PRM dated February 18, 2014 (ADAMS Accession No. ML14071A382). Section II, Description of Petitioners,[1] of the petition states that ''[a]ll of the organizations are neighbors of existing or proposed nuclear power plants, and most have either intervened or plan to intervene in NRC proceedings for the licensing or re-licensing of nuclear power plants.''[2]

II. The Petition

The petitioner states that the NRC, as a result of its post-Fukushima proceedings, generated new and significant information bearing on the environmental impacts of high-density pool storage in reactor pools and alternatives for avoiding or mitigating those impacts. The petitioner believes that the NRC-generated information satisfies the National Environmental Policy Act (NEPA) standard for ''new and significant'' information, in that the information is new because it has not been considered in any environmental study for the licensing or re-licensing of nuclear reactors and it is significant because it could affect the outcome of licensing and license renewal decisions for nuclear reactors, by altering the NRC's characterization of the impacts of spent fuel storage and/or by resulting in the consideration of measures to mitigate the environmental impacts of pool fires.

The petitioner requests the NRC take the following actions to ensure compliance with NEPA in the consideration of this new and significant information:

- Republish for public comment the 2013 Revised License Renewal Generic Environmental Impact Statement, the Environmental Impact Statements for all new reactors; and the Environmental Assessments for all new certifications of standardized reactor designs;
- Duly modify the NRC's regulations that make or rely on findings regarding the environmental impacts of spent fuel storage during reactor operation, including Table B–1 in subpart A of appendix B in Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR) and all regulations approving standardized reactor designs.

The complete text of the petition is available for review as described in the **ADDRESSES** section of this document.

Because the petitioner has satisfied the acceptance criteria in § 2.802, ''Petition for rulemaking,'' the NRC has accepted, and will review these requests to determine whether they should be considered in the rulemaking process. The NRC staff is currently reviewing the comments on the draft Waste Confidence Generic Environmental Impact Statement (78 FR 56621; September 13, 2013) and the proposed waste confidence rulemaking (78 FR 56766; September 13, 2013). The NRC staff will consider any insights gained from this ongoing review when analyzing the issues raised in PRM–51–31.

The NRC is not requesting public comment on the PRM at this time.

III. Petitioner's Request To Suspend Licensing Decisions Until the NRC Has Completed the Environmental Analysis Required by NEPA

The petitioner requests the NRC take the following actions to ensure compliance with NEPA in the

[1] Petition on pages 5 through 10.

[2] Petition on page 5.

consideration of this new and significant information:

• Suspend the effectiveness, in any new reactor licensing proceeding for reactors that employ high-density pool storage of spent fuel, of all regulations approving the standardized designs for those new reactors and all Environmental Assessments (''EAs'') approving Severe Accident Mitigation Design Alternatives (''SAMDAs'');

• Suspend all new reactor licensing decisions and license renewal decisions pending completion of this proceeding; and

• Suspend the effectiveness of Table B–1, which codifies the NRC's generic finding that spent fuel storage in high-density rector pools during the license renewal term of operating reactor poses no significant environmental impacts and therefore, need not be considered in individual reactor licensing decisions.

The NRC has determined that these requests are not part of the rulemaking process. The NRC will address in a separate action the petitioner's request to suspend these actions pending the NEPA analysis the petitioner believes to be necessary to address new and significant information generated by the NRC during its post-Fukushima proceedings.

Dated at Rockville, Maryland, this 24th day of April, 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2014–10018 Filed 4–30–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2014–0008]

RIN 1557–AD81

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1487]

RIN 7100–AD AD16

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE12

Regulatory Capital Rules: Regulatory Capital, Proposed Revisions to the Supplementary Leverage Ratio

AGENCIES: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing a notice of proposed rulemaking (proposed rule) that would revise the denominator of the supplementary leverage ratio (total leverage exposure) that the agencies adopted in July 2013 as part of comprehensive revisions to the agencies' regulatory capital rules (2013 revised capital rule). Specifically, the proposed rule would revise the treatment of on- and off-balance sheet exposures for purposes of determining total leverage exposure, and more closely align the agencies' rules on the calculation of total leverage exposure with international leverage ratio standards.

The proposed rule would incorporate in total leverage exposure the effective notional principal amount of credit derivatives and other similar instruments through which a banking organization provides credit protection (sold credit protection), modify the calculation of total leverage exposure for derivatives and repo-style transactions, and revise the credit conversion factors (CCFs) applied to certain off-balance sheet exposures. The proposed rule also would make changes to the methodology for calculating the supplementary leverage ratio and to the public disclosure requirements for the supplementary leverage ratio.

The proposed rule would apply to all banks, savings associations, bank holding companies, and savings and loan holding companies (banking organizations) that are subject to the agencies' advanced approaches risk-based capital rules (advanced approaches banking organizations), as defined in the 2013 revised capital rule, including advanced approaches banking organizations that are subject to the enhanced supplementary leverage ratio standards that the agencies have adopted in final form and published elsewhere in today's **Federal Register** (the eSLR standards). Consistent with the 2013 revised capital rule, advanced approaches banking organizations will be required to disclose their supplementary leverage ratios beginning January 1, 2015, and will be required to comply with a minimum supplementary leverage ratio capital requirement of 3 percent and, as applicable, the eSLR standards beginning January 1, 2018. The agencies are seeking comment on all aspects of the proposed rule.

DATES: Comments must be received no later than June 13, 2014.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules: Regulatory Capital, Proposed Revisions to the Supplementary Leverage Ratio'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0008'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.

• Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2014–0008'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0008'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen.

• Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

• *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1487 RIN AE–16, by any of the following methods:

• *Agency Web site:http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Robert de V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street NW., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE12, by any of the following methods:

Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency Web site.

• *Email: Comments@fdic.gov.* Include the RIN 3064–AE12 on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064–AE12 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

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Board: Constance M. Horsley, Assistant Director, (202) 452–5239; Thomas Boemio, Manager, (202) 452–2982; or Sviatlana Phelan, Senior Financial Analyst, (202) 912–4306, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin McDonough, Senior Counsel, (202) 452–2036; April C. Snyder, Senior Counsel, (202) 452–3099; or Mark Buresh, Attorney, (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: George French, Deputy Director, *gfrench@fdic.gov;* Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov;* Karl Reitz, Chief, Capital Markets Strategies Section, *kreitz@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, *regulatorycapital@fdic.gov* or (202) 898–6888; or Mark Handzlik, Counsel, *mhandzlik@fdic.gov;* Michael Phillips, Counsel, *mphillips@fdic.gov;* or Rachel Ackmann, Attorney, *rackmann@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) comprehensively revised and strengthened the capital regulations applicable to banking organizations (2013 revised capital rule). The 2013 revised capital rule included a new minimum supplementary leverage ratio requirement of 3 percent.[1] The supplementary leverage ratio applies to banking organizations that are subject to the agencies' advanced approaches risk-based capital rules (advanced approaches banking organizations), as defined in the 2013 revised capital rule,

[1] The Board and the OCC published a joint final rule in the **Federal Register** on October 11, 2013 (78 FR 62018) and the FDIC published a substantially identical interim final rule on September 10, 2013 (78 FR 55340).

and is the arithmetic mean of the ratio of tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

The supplementary leverage ratio included in the 2013 revised capital rule is generally consistent with the international leverage ratio introduced by the Basel Committee on Banking Supervision (BCBS) in 2010 (Basel III leverage ratio).[2] The agencies indicated in the preamble to the 2013 revised capital rule that they would consider revising the supplementary leverage ratio to take into account subsequent changes made by the BCBS to the Basel III leverage ratio.

In January 2014, the BCBS adopted revisions to the Basel III leverage ratio, which include the recognition in the denominator of the effective notional principal amount of credit derivatives or similar instruments through which a banking organization provides credit protection, modifications to the measure of exposure for derivatives and repo-style transactions, and revisions to the credit conversion factors (CCFs) for certain off-balance sheet exposures (BCBS 2014 revisions).[3]

The agencies believe that revising the supplementary leverage ratio in a manner consistent with the BCBS 2014 revisions would strengthen the definition of total leverage exposure and improve the measure of a banking organization's on- and off-balance sheet exposures. The agencies believe that the BCBS 2014 revisions would promote consistency in the calculation of this ratio across jurisdictions and are responsive to a number of specific concerns expressed by commenters on the supplementary leverage ratio in the 2013 revised capital rule and on the enhanced supplementary leverage ratio standards proposal (eSLR standards proposal).[4] In addition, the agencies are proposing additional supplementary leverage ratio disclosure requirements, consistent with the BCBS 2014 revisions. The agencies believe that the proposed disclosures would enhance transparency and provide market participants with important information related to the supplementary leverage ratio.

Elsewhere in today's **Federal Register**, the agencies have published a final rule that applies enhanced supplementary leverage ratio standards to the largest, most interconnected U.S. banking organizations (eSLR standards final rule).

The agencies seek comment on all aspects of the proposed rule, including its interactions with the eSLR standards final rule, as the proposed changes to total leverage exposure and the methodology for calculating the supplementary leverage ratio also would, if adopted, affect banking organizations subject to the eSLR standards final rule.

II. Proposed Rule

As discussed in further detail below, the proposed rule would revise the calculation of the supplementary leverage ratio and the definition of total leverage exposure. The proposed rule also would address some of the comments the agencies received regarding the interaction of the BCBS agreements and the agencies' eSLR standards proposal. In general, the changes are designed to strengthen the supplementary leverage ratio by more appropriately capturing the exposure of a banking organization's on- and off-balance sheet items. For example, the proposed rule would capture in total leverage exposure the effective notional principal amount of credit derivatives and other similar instruments through which a banking organization provides credit protection (sold credit protection), which has the effect of increasing total leverage exposure associated with these credit derivatives, and introduce graduated CCFs in the treatment of off-balance sheet commitments that would reduce the portion of total leverage exposure associated with these commitments. The proposed rule also would modify the total leverage exposure calculation for derivative contracts and repo-style transactions in a manner that is intended to ensure that the supplementary leverage ratio appropriately reflects the economic exposure of these activities.

Consistent with the 2013 revised capital rule, total leverage exposure would continue to include:

(i) The balance sheet carrying value of a banking organization's on-balance sheet assets, less amounts deducted from tier 1 capital under sections 22(a), 22(c), and 22(d) of the 2013 revised capital rule;

(ii) The potential future exposure (PFE) for each derivative contract, including for certain cleared transactions, to which the banking organization is a counterparty (or each single-product netting set of such transactions) determined in accordance with the treatment of derivative contracts under the standardized approach for risk-weighted assets, and as set forth in section 34 of the 2013 revised capital rule. However, for purposes of determining total leverage exposure, a banking organization would not be permitted to reduce the PFE by the amount of any collateral under section 34(b) of the 2013 revised capital rule;[5] and

(iii) 10 percent of the notional amount of unconditionally cancellable commitments made by the banking organization.

Under the proposed rule, total leverage exposure also would include:

- Adjustments to exposure amounts associated with derivative contracts if cash collateral received from, or posted to, a counterparty for derivative contracts does not meet specified conditions;
- The effective notional principal amount, subject to certain reductions, of sold credit protection that is not offset by purchased credit protection on the same underlying reference exposure that meets specified conditions;
- Adjustments to the on-balance sheet asset amounts for repo-style transactions (including securities lending, securities borrowing, repurchase and reverse repurchase transactions), including a requirement to include in total leverage exposure the gross value of receivables associated with repo-style transactions that do not meet specified conditions;
- A measure of counterparty credit risk for repo-style transactions; and
- The notional amount of all other off-balance sheet exposures (excluding off-balance sheet exposures associated with securities lending, securities borrowing, reverse repurchase transactions, and derivatives) multiplied by the appropriate CCF under the standardized approach for risk-weighted assets, and as set forth in section 33 of the 2013 revised capital rule. However, for purposes of determining total leverage exposure, the minimum CCF that may be assigned to an off-balance sheet exposure is 10 percent.

The proposed rule also would clarify the calculation of total leverage

[2] *See* BCBS, ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (December 2010 and revised in June 2011), available at *http://www.bis.org/publ/bcbs189.htm.* The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. More information regarding the BCBS and its membership is available at *http://www.bis.org/bcbs/about.htm.* Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.*

[3] *See* BCBS, ''Basel III leverage ratio framework and disclosure requirements'' (January 2014), available at *http://www.bis.org/publ/bcbs270.htm. See also* BCBS, ''Revised Basel III leverage ratio framework and disclosure requirements—consultative document'' (June 2013), available at *http://www.bis.org/publ/bcbs251.htm.*

[4] *See* 78 FR 51101 (August 20, 2013).

[5] A banking organization may choose to adjust the PFE for certain sold credit protection as described in part II.b of this preamble.

exposure for a clearing member banking organization with regard to cleared derivative contracts that are intermediated on behalf of a clearing member client with a central counterparty (CCP) to ensure that the clearing member banking organization does not double count these exposures.

Finally, the proposed rule would revise the calculation of the supplementary leverage ratio to address some of the comments received on the eSLR standards proposal. Specifically, under the proposed rule, a banking organization would calculate tier 1 capital as of the last day of each reporting quarter, consistent with the calculation of tier 1 capital for purposes of the generally applicable leverage ratio requirement,[6] and total leverage exposure would be calculated as the arithmetic mean of the total leverage exposure calculated as of each day of the reporting quarter.

a. Cash Variation Margin

Under the 2013 revised capital rule, total leverage exposure includes a banking organization's on-balance sheet assets, including the carrying value, if any, of derivative contracts on the banking organization's balance sheet. For purposes of determining the carrying value of derivative contracts, U.S. generally accepted accounting principles (GAAP) provide a banking organization the option to reduce any positive mark-to-fair value of a derivative contract by the amount of any cash collateral received from the counterparty, provided the relevant GAAP criteria for offsetting are met (the GAAP offset option).[7] Similarly, under the GAAP offset option, a banking organization has the option to offset the negative mark-to-fair value of a derivative contract with a counterparty by the amount of any cash collateral posted to the counterparty. Essentially, the GAAP offset option allows a banking organization to treat cash collateral that the banking organization receives or posts as a form of pre-settlement of an obligation between itself and its counterparty to the derivative contract. In addition, regardless of whether a banking organization uses the GAAP offset option to calculate the on-balance sheet amount of derivatives contracts, the banking organization includes the amount of cash collateral received from the counterparty in its on-balance sheet assets, and thus in its total leverage exposure.

The proposed rule would specify the conditions that a banking organization's cash collateral received from or posted to a counterparty to a derivative contract (cash variation margin) would be required to satisfy in order for the cash collateral to not be included in the organization's total leverage exposure. The proposed conditions are generally similar to the criteria for the GAAP offset option, and therefore, to the treatment under the 2013 revised capital rule. However, if a banking organization reduces the positive mark-to-fair value of a derivative contract with a counterparty as permitted under the GAAP offset option, but the cash collateral received does not meet the specified conditions for cash variation margin, the banking organization would be required to include the positive mark-to-fair value of the derivative contract gross of any cash collateral in its total leverage exposure. Similarly, if a banking organization offsets the net negative mark-to-fair value of derivative contracts with a counterparty by the amount of any cash collateral posted to the counterparty, and does not include that cash collateral posted to the counterparty in its on-balance sheet assets, as permitted under the GAAP offset option, but the cash collateral posted does not meet the specified conditions for cash variation margin, the banking organization would be required to include such cash collateral in its total leverage exposure.

The agencies believe that the regular and timely exchange of cash variation margin is an effective way of protecting both counterparties from the effects of a counterparty default. The proposed criteria that must be satisfied for cash variation margin to not be included in total leverage exposure were developed to ensure that such cash collateral is, in substance, a form of pre-settlement payment on a derivative contract. This approach is consistent with the design of the supplementary leverage ratio, which generally does not permit collateral to reduce exposures for purposes of calculating total leverage exposure.

Under the proposed rule, cash variation margin that satisfies the requirements described below may be used to reduce only the current credit exposure amount (*i.e.,* the replacement cost) of a derivative contract, described in section 34(a)(i) of the 2013 revised capital rule, and may not be used to reduce the PFE. Accordingly, the proposed rule would prohibit a banking organization from using cash variation margin to reduce the net-to-gross ratio (NGR) described in section 34(a)(2)(ii)(B) of the 2013 revised capital rule. Specifically, in the calculation of the NGR, cash variation margin may not reduce the net current credit exposure or the gross current credit exposure. In addition, the current credit exposure amount of all derivative contracts with a counterparty would not be allowed to be negative.

Under the proposed rule, if a banking organization applies the GAAP offset option to the cash collateral exchanged between the banking organization and its counterparty to a derivative contract, the banking organization would be required to reverse the effect of the GAAP offset option for purposes of determining total leverage exposure, unless the cash collateral is cash variation margin that satisfies all of the following conditions:

(1) For derivative contracts that are not cleared through a qualifying central counterparty (QCCP), the cash collateral received by the recipient counterparty is not segregated;

(2) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(3) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the current credit exposure amount to the counterparty of the derivative contract, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(4) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that, for purposes of this paragraph, currency of settlement means any currency for settlement specified in the qualifying master netting agreement,[8] the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(5) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or the governing rules for a cleared transaction. The qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net

[6] The generally applicable leverage ratio under the 2013 revised capital rule is the ratio of a banking organization's tier 1 capital to its average total consolidated assets as reported on the banking organization's regulatory report minus amounts deducted from tier 1 capital.

[7] *See* Accounting Standards Codification paragraphs 815–10–45–1 through 7.

[8] Qualifying master netting agreement is defined in section 2 of the 2013 revised capital rule.

basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs.

Question 1: What are the benefits and drawbacks of the proposed treatment of cash variation margin for purposes of calculating total leverage exposure?

Question 2: What differences, if any, exist between the proposed criteria for cash variation margin for purposes of the supplementary leverage ratio and the treatment of cash collateral under GAAP? Commenters are encouraged to provide quantitative information regarding the magnitude of any such differences. In addition, what are commenters' views on an alternative approach for cash collateral transferred in derivative transactions that would use only the GAAP offset option for purposes of taking into account cash collateral in calculation of total leverage exposure?

Question 3: What are the operational implications of the proposed criteria for cash variation margin, as well as the proposed definition of the currency of settlement? What other concerns, if any, do commenters have with regard to banking organizations' ability to satisfy the specified criteria for cash variation margin in light of the requirements for qualifying master netting agreements and cleared transactions?

b. Credit Derivatives

Under the 2013 revised capital rule, credit derivatives are treated in the same manner as other derivative contracts for purposes of determining total leverage exposure. As such, a banking organization would calculate the exposure amount associated with a credit derivative using the current exposure methodology as described in section 34 of the 2013 revised capital rule. This methodology captures the counterparty credit risk arising from the creditworthiness of the counterparty, but not the credit risk of the underlying reference exposure.

A banking organization that provides credit protection in the form of a credit derivative agrees to assume the credit risk of the reference exposure, similar to providing a guarantee. As such, a provider of credit protection on an underlying reference exposure has a credit exposure to the underlying reference exposure, in addition to the counterparty credit risk exposure associated with the counterparty. For this reason, the agencies believe that it is appropriate to revise the measure of exposure for sold credit protection in a manner that is more consistent with the treatment of guarantees. Sold credit protection would include, but not be limited to, credit default swaps and total return swaps that reference instruments with credit risk (*e.g.,* a bond). This proposed change is consistent with the 2014 BCBS revisions.

Accordingly, in addition to the exposure amount calculated for sold credit protection under the current exposure methodology, the proposed rule would include in total leverage exposure the effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of sold credit protection, subject to certain reductions described below. The use of the effective notional principal amount is designed to capture the potential exposure of contracts that are leveraged or otherwise enhanced by the structure of the transaction. For example, a credit default swap with a stated notional amount of $50 that pays the purchaser of protection twice the difference between the par value of the reference exposure and the value of the reference exposure at default would have an effective notional principal amount equal to $100.

Under the proposed rule, a banking organization would be permitted to reduce the effective notional principal amount of sold credit protection by any reduction in the mark-to-fair value of the sold credit protection if the reduction is recognized in common equity tier 1 capital.

A banking organization would be permitted to further reduce the effective notional principal amount of sold credit protection by the effective notional principal amount of a credit derivative or similar instrument through which the banking organization has purchased credit protection from a third party (purchased credit protection), provided certain requirements are satisfied as described below.

First, the purchased credit protection would need to have a remaining maturity that is equal to or greater than the remaining maturity of the sold credit protection.

Second, to reduce the effective notional principal amount of sold credit protection that references a single reference exposure, the reference exposure of the purchased credit protection would need to refer to the same legal entity and rank *pari passu* with, or be junior to,[9] the reference exposure of the sold credit protection.

In addition, a banking organization may reduce the effective notional principal amount of sold credit protection that references a single reference exposure by a purchased credit protection that references multiple exposures if the purchased credit protection is economically equivalent to buying credit protection separately on each of the individual reference exposures of the sold credit protection. For example, this would be the case if a banking organization were to purchase credit protection on an entire securitization structure or on an entire index that includes the reference exposure of the sold credit protection. However, if banking organization purchases credit protection that references multiple exposures, but the purchased credit protection does not cover all of the sold credit protection's reference exposures (that is, the purchased credit protection covers only a subset of the sold credit protection's reference exposures, as in the case of an nth-to-default credit derivative or a tranche of a securitization), the proposed rule would not allow the banking organization to reduce the effective notional principal amount of the sold credit protection that references a single exposure.

To reduce the effective notional principal amount of sold credit protection that references multiple exposures, the reference exposures of the purchased credit protection would need to refer to the same legal entities and rank *pari passu* with the reference exposures of the sold credit protection. In addition, the level of seniority of the purchased credit protection would need to rank *pari passu* to the level of seniority of the sold credit protection. Therefore, offsetting would be recognized only when all of the reference exposures and the level of subordination of protection sold and protection purchased are identical. For example, a banking organization may reduce the effective notional principal amount of the sold credit protection on an index (e.g., the CDX), or a tranche of an index, with purchased credit protection on such index, or a tranche of equal seniority of such index, respectively.

When a banking organization reduces the effective notional principal amount of sold credit protection by (i) a reduction in the mark-to-fair value of the sold credit protection (through common equity tier 1 capital) and (ii) purchased credit protection as described above, the banking organization must reduce the effective notional principal amount of purchased credit protection by the amount of any increase in the mark-to-fair value of the purchased credit protection that is recognized in common equity tier 1 capital. Further, if

[9] A credit event on the senior reference exposure must result in a credit event on the junior reference exposure.

a banking organization purchases credit protection through a total return swap and records the net payments received as net income but does not record offsetting deterioration in the mark-to-fair value of the sold credit protection on the reference exposure (either through reductions in fair value or by additions to reserves) in common equity tier 1 capital, the banking organization would not be allowed to reduce the effective notional principal amount of the sold credit protection.

Under the proposed rule, because sold credit protection is included in total leverage exposure through the effective notional principal amount, the current credit exposure and the PFE, a banking organization would be permitted to adjust the PFE for sold credit protection to avoid double-counting of the notional amounts of these exposures. For example, if the sold credit protection is governed by a qualifying master netting agreement, a banking organization may adjust the PFE for sold credit protection covered by the qualifying master netting agreement. However, a banking organization would be allowed to adjust only the amount A_{gross} of the PFE calculation for sold credit derivatives and would not be allowed to adjust the NGR of the PFE calculation. Finally, a banking organization that elects to adjust the PFE for sold credit derivatives would be required to do so consistently over time.

Question 4: What are commenters' views on incorporating the effective notional principal amount of sold credit protection in total leverage exposure and on the proposed criteria for determining the exposure amount of such sold credit protection, including the operational burden of the calculation?

Question 5: What specific modifications, if any, should the agencies consider with respect to the proposed measure of exposure for sold credit protection?

Question 6: What are commenters' views on the proposed optional adjustment of the PFE calculation for sold credit protection?

c. Repo-Style Transactions

Under the 2013 revised capital rule, total leverage exposure includes the on-balance sheet carrying value of repo-style transactions, but not any related off-balance sheet exposure for such transactions. For the purpose of determining the on-balance sheet carrying value of a repo-style transaction with a counterparty, GAAP permits the offset of gross values of receivables due from a counterparty under reverse repurchase agreements by the amount of the payments due to the counterparty (that is, amounts recognized as payables to the same counterparty under repurchase agreements), provided the relevant accounting criteria are met (GAAP offset for repo-style transactions).[10]

Consistent with the approach in the BCBS 2014 revisions, the proposed rule would specify the criteria for when a banking organization would be required to reverse the GAAP offset for repo-style transactions and include a measure of counterparty credit risk for repo-style transactions in the calculation of total leverage exposure to better capture a banking organization's exposure to repo-style transaction counterparties. The proposed rule would also clarify the calculation of exposure for repo-style transactions where a banking organization acts as an agent.

Under the proposed rule, if a banking organization sells securities under a repo-style transaction and the transaction is treated as a sale (rather than a secured borrowing) for accounting purposes, the banking organization would be required to add the value of such securities to total leverage exposure for as long as the repo-style arrangement is outstanding. While the agencies believe that such repo-style arrangements are not common in the United States, the agencies are proposing this treatment, consistent with the BCBS 2014 revisions, to capture a banking organization's economic exposure, even if an accounting sales treatment is achieved, in cases when the banking organization may have future contractual obligations arising under the repo-style arrangement.

Question 7: What are commenters' views on the proposed treatment of repo-style arrangements where an accounting sales treatment is achieved?

Under the proposed rule, when a banking organization acts as a principal in a repo-style transaction, it generally would include in total leverage exposure the amount of any on-balance sheet assets recognized for repo-style transactions (that is, after applying the GAAP offset for repo-style transactions). However, if the criteria described below are not satisfied, the banking organization would be required to replace the on-balance sheet assets for those repo-style transactions with the gross value of receivables associated with those repo-style transactions in calculating its total leverage exposure. That is, if a banking organization enters into repurchase and reverse repurchase transactions with the same counterparty and applies the GAAP offset for repo-style transactions but does not meet the below criteria, the banking organization would be required to replace the on-balance sheet assets of the reverse repurchase transactions with the gross value of receivables for those reverse repurchase transactions.

Specifically, under the proposed rule, the gross value of receivables associated with the repo-style transactions would be included in total leverage exposure unless all of the following criteria are met:

(A) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(B) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(C) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement. That is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date. To achieve this result, both transactions must be settled through the same settlement system and the settlement arrangements must be supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

The proposed criteria have been developed by the BCBS to ensure that banking organizations subject to different accounting frameworks and using different settlement mechanisms measure the exposure of repo-style transactions in a consistent manner. For example, the third proposed criterion is designed to ensure that the cash flows between the counterparties to repo-style transactions are equivalent, in effect, to a single net amount on the settlement date. This criterion would be met if the counterparties use securities transfer systems or central settlement systems, supported by cash or intraday credit facilities, that offset repo-style transactions using gross amounts for each counterparty, but require the counterparties to transfer only a net amount owed at the end of the business day.

The agencies observe that, as compared to a potentially more encompassing measure of exposure that

[10] *See* Accounting Standards Codification paragraph 210–20–45–11.

would include the gross values of receivables in reverse repurchase transactions, the proposed approach of allowing a limited offsetting of such assets gives some recognition to the arrangements that banking organizations have to limit their effective economic exposure from these transactions. Based on supervisory experience with current industry practices, the agencies believe that the proposed criteria for repo-style transactions would result in repo-style transaction amounts in total leverage exposure that are somewhat greater than the on-balance sheet amounts and, as a result, would increase the regulatory capital requirement for such transactions. The agencies also acknowledge that there may be some costs to banking organizations associated with developing information systems to ensure that banking organizations meet the proposed criteria for repo-style transactions.

Question 8: What are the operational implications of the proposed netting criteria for repo-style transactions compared to GAAP, and the magnitude of the change in total leverage exposure for these transactions compared to GAAP?

Question 9: What are the potential costs of developing the necessary systems to offset amounts recognized as receivables due from a counterparty under reverse repurchase agreements?

In a security-for-security repo-style transaction, rather than receiving cash as collateral against securities loaned, a banking organization receives securities as collateral for the securities that it lends. Under GAAP, the receiver of the securities lent (a securities borrower) does not include a security borrowed on its balance sheet unless the securities borrower sells the security or its lender defaults under the terms of the transaction.[11] The security that a securities borrower transfers to its lender (a securities lender) as collateral would remain on the securities borrower's balance sheet. Consistent with GAAP, under the proposed rule, a securities borrower would include the security transferred to a securities lender in total leverage exposure and would not include the security borrowed in total leverage exposure, unless it sells the security or the lender defaults.

From the securities lender's perspective, under GAAP, a security received as collateral from a securities borrower is included on the security lender's balance sheet as an asset. The securities lender also would continue to include the security that it lent on its balance sheet, if it is treated as a secured borrowing. Under the proposed rule, in a security-for-security repo-style transaction, a securities lender would be allowed to exclude the security received as collateral from total leverage exposure, unless and until the securities lender sells or re-hypothecates the security. If the securities lender sells or re-hypothecates the security, the securities lender would include the amount of cash received or, in the case of re-hypothecation, the value of the security pledged as collateral in total leverage exposure. This approach is designed to ensure that a securities lender does not include both a security lent and a security received in total leverage exposure, until the securities lender sells or re-hypothecates the security received, to achieve a consistent treatment of security-for-security repo-style transactions under different accounting frameworks.

Question 10: What are commenters' views regarding the operational burden of the proposed exclusion of securities received in a security-for-security transaction from total leverage exposure?

Question 11: How quantitatively different is the proposed treatment of repo-style transactions in total leverage exposure compared to the treatment under GAAP?

The proposed rule also would include a counterparty credit risk measure in total leverage exposure to capture a banking organization's exposure to the counterparty in repo-style transactions. To determine the counterparty exposure for a repo-style transaction, including a transaction in which a banking organization acts as an agent for a customer and indemnifies the customer against loss, the banking organization would subtract the fair value of the instruments, gold, and cash received from a counterparty from the fair value of any instruments, gold and cash lent to the counterparty. If the resulting amount is greater than zero, it would be included in total leverage exposure. For repo-style transactions that are not subject to a qualifying master netting agreement or that are not cleared transactions, the counterparty exposure measure must be calculated on a transaction-by-transaction basis. However, if a qualifying master netting agreement is in place, or the transaction is a cleared transaction, the banking organization could net the total fair value of instruments, gold, and cash lent to a counterparty against the total fair value of instruments, gold and cash received from the counterparty for those transactions.

The agencies believe that the proposed approach recognizes that any positive, uncollateralized portion of a repo-style transaction (or a netting set thereof) is, in effect, an economic exposure for a banking organization that warrants inclusion in total leverage exposure.

Question 12: What are commenters' views on the proposed treatment of counterparty credit risk for repo-style transactions?

Finally, consistent with the BCBS 2014 revisions, where a banking organization acts as agent for a repo-style transaction and provides a guarantee (indemnity) to a customer with regard to the performance of the customer's counterparty that is greater than the difference between the fair value of the security or cash lent and the fair value of the security or cash borrowed, the banking organization must include the amount of the guarantee that is greater than this difference in its total leverage exposure. The agencies believe that this treatment recognizes that such indemnifications are effectively full or partial guarantees of the security or cash that is lent or borrowed.

Question 13: What clarifications may be warranted in any final rule with regard to the proposed treatment for agency repo-style transactions?

d. Credit Conversion Factors for Off-Balance Sheet Exposures

Under the 2013 revised capital rule, banking organizations must apply a 100 percent CCF to all off-balance sheet items to calculate total leverage exposure, except for unconditionally cancellable commitments, which are subject to a 10 percent CCF. The proposed rule would revise this treatment, consistent with the BCBS 2014 revisions. The proposed rule would retain the 10 percent CCF for unconditionally cancellable commitments, but it would replace the uniform 100 percent CCF for other off-balance sheet items with the CCFs applicable under the standardized approach for risk-weighted assets in section 33 of the 2013 revised capital rule.

For example, under the proposed rule, a banking organization would apply a 20 percent CCF to a commitment with an original maturity of one year or less that is not unconditionally cancellable, as provided by section 33 of the 2013 revised capital rule. However, for a commitment that is unconditionally cancellable, a banking organization would apply a 10 percent CCF even

[11] The accounting treatment of security-for-security transactions is in Accounting Standards Codification 860–30, Secured Borrowing and Collateral.

though such commitment receives a zero percent CCF under the 2013 revised capital rule.

The agencies weighed a number of supervisory and prudential considerations in proposing this approach. The fixed 100 percent CCF in the 2013 revised capital rule is a conservative measure of economic exposure that does not differentiate across types of off-balance sheet commitments. However, because a uniform 100 percent CCF treats all off-balance sheet exposures identically to on-balance sheet exposures, such an approach likely overstates the relative magnitude of the effective economic exposure created by most off-balance sheet exposures as compared to on-balance sheet exposures. The proposed approach is designed to incorporate off-balance sheet exposures in total leverage exposure without overstating the effective exposure amounts for these items.

In addition, to ensure that all unfunded commitments are included in a banking organization's total leverage exposure, unconditionally cancellable commitments (such as credit card lines) would continue to be subject to a CCF of 10 percent, consistent with the 2013 revised capital rule, rather than the zero percent specified in the standardized approach for risk-weighted assets. The agencies believe that the proposed CCFs, which are also consistent with the internationally agreed approach of standardized CCFs, are appropriate for measuring total leverage exposure.

Question 14: What are commenters' views on the proposed CCFs for off-balance sheet items? What, if any, modifications should be made to the proposed CCFs for any specific off-balance sheet items?

e. Central Clearing of Derivative Transactions

The 2013 revised capital rule incorporates over-the-counter (OTC) derivatives and cleared derivative transactions in total leverage exposure in a uniform manner. The agencies are clarifying that the calculation of total leverage exposure must include the PFE for both non-cleared and certain cleared derivative transactions.

The 2013 revised capital rule provides that a banking organization must include in total leverage exposure the PFE for each derivative contract to which the banking organization is a counterparty (or each single-product netting set of such transactions) calculated in accordance with section 34 (OTC derivative contracts), but without regard to any collateral used to reduce risk-based capital requirements pursuant to section 34(b) of the 2013 revised capital rule. Although cleared transactions are generally addressed in section 35 of the 2013 revised capital rule, section 35 refers to section 34 for the purpose of determining the PFE of cleared derivative transactions. Thus, for the purpose of measuring total leverage exposure, the PFE for each derivative transaction to which a banking organization is a counterparty, including cleared derivative transactions, should be determined pursuant to section 34. The agencies are proposing to revise the description of total leverage exposure to make this point more clear.

In addition, the agencies are clarifying the treatment of a cleared transaction on behalf of a clearing member client (client-cleared transaction). There are two models for client-cleared transactions—the agency model, which is common in the United States, and the principal model. In the agency model, a clearing member client enters into a derivative transaction directly with the CCP and the clearing member banking organization provides a guarantee of its clearing member client's performance to the CCP. If the clearing member client defaults, the clearing member banking organization must assume its clearing member client's obligations to the CCP with respect to the transaction (the guaranteed amount). The agencies are clarifying that the clearing member banking organization must include the guaranteed amount in its total leverage exposure.

In the principal model, the clearing member banking organization serves as an intermediary between the clearing member client and the CCP. The principal model client-cleared transaction generally has two separate components—the clearing member client leg between the clearing member client and the clearing member banking organization, and the CCP leg between the clearing member banking organization and the CCP. The net effect is that, in the absence of a default, the clearing member banking organization is an intermediary for the exchange of cash flows between the clearing member client and the CCP, who are the effective counterparties to the transaction. If the clearing member client defaults in the principal model, the clearing member banking organization must generally continue to honor the clearing member client's contract with the CCP (that is, the guaranteed amount). The agencies are clarifying that the clearing member banking organization must include the guaranteed amount in its total leverage exposure.

In addition, in either model for client-cleared transactions, a banking organization may or may not guarantee the performance of the CCP to a clearing member client. When the clearing member banking organization does not guarantee the performance of the CCP, the clearing member banking organization has no payment obligation to the clearing member client in the event of a CCP default. In these circumstances, requiring the clearing member banking organization to include an exposure to the CCP in its total leverage exposure generally would result in an overstatement of total leverage exposure. Therefore, under the proposed rule, and consistent with the BCBS 2014 revisions, a clearing member banking organization would not be required to include in its total leverage exposure an exposure to the CCP for client-cleared transactions if the clearing member banking organization does not guarantee the performance of the CCP to the clearing member client. However, if a clearing member banking organization does guarantee the performance of the CCP to the clearing member client, then a clearing member banking organization would be required to include an exposure to the CCP for the client-cleared transactions in its total leverage exposure under the proposed rule.

Question 15: What are commenters' views on the proposed total leverage exposure measurement of client-cleared transactions entered into by a clearing member banking organization? What other additional clarifications, if any, are necessary to clarify the exposure amount for client-cleared transactions?

f. Daily Averaging

The 2013 revised capital rule defines the supplementary leverage ratio as the arithmetic mean of the ratio of tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter. The agencies are proposing to revise the calculation of the supplementary leverage ratio as described below.

Under the proposed rule, the numerator of the supplementary leverage ratio, tier 1 capital, would be calculated as of the last day of each reporting quarter. This approach is consistent with the calculation of the numerator of the generally applicable leverage ratio and would ensure that banking organizations use the same tier 1 calculation for all of their leverage ratio calculations as well as their tier 1 capital ratio. However, total leverage exposure would be defined as the arithmetic mean of the total leverage exposure calculated for each day of the

reporting quarter. In other words, banking organizations would use the average of the daily calculations throughout the quarter of their total leverage exposure without applying any deductions. After calculating quarter-end tier 1 capital, banking organizations would subtract from the measure of total leverage exposure the applicable deductions from the previous quarter, for purposes of calculating the quarter-end supplementary leverage ratio.

Some commenters on the eSLR standards proposal stated that using an average of three month-end balances to calculate total leverage exposure could lead to an artificial and temporary increase of the supplementary leverage ratio at the end of the month. These commenters argued that certain banking organizations, such as custody banks, can experience sudden substantial deposit inflows at the end of reporting periods or during times of financial stress, potentially causing a temporary increase of balance sheet assets. The proposed rule is designed to address this concern regarding sudden deposit inflows and result in measuring total leverage exposure more consistently over time.

Question 16: What are commenters' views on the operational burden associated with the daily averaging of off-balance sheet exposures, including the PFE of derivatives, and do the benefits of such a calculation outweigh the costs?

Question 17: What are commenters' views on the operational burden and integrity of an approach where daily averaging is required for on-balance sheet assets only? Under such an approach, banking organizations would use the daily average of on-balance sheet exposures and the quarter-end calculation of off-balance sheet exposures when computing total leverage exposure.

Question 18: Are there any alternative methods of calculating total leverage exposure that would be appropriate for the supplementary leverage ratio?

III. Estimated Capital Impact

Quantitatively, compared to the 2013 revised capital rule, the most important changes in total leverage exposure in the proposed rule are (i) the proposed use of standardized CCFs for certain off-balance sheet activities, which should lead to a reduction in total leverage exposure and (ii) the proposed treatment of sold credit derivatives, which should lead to an increase in total leverage exposure. The actual total leverage exposure under the proposed rule would be especially sensitive to the volume of sold credit derivatives activities and whether those activities are hedged in a manner recognized under the proposal. Other regulatory changes, including the implementation of sections 619 and 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[12] also may reduce the volume of credit derivatives generally, in addition to increasing the extent to which credit derivatives are hedged.

Supervisory estimates suggest that the proposed changes to the definition of total leverage exposure would result in an approximately 5.5 percent aggregate increase in total leverage exposure compared to the definition of total leverage exposure in the 2013 revised capital rule for all banking organizations subject to the revised definition.[13] This is an average figure and could vary materially from institution to institution. Additionally, these estimates are especially sensitive to the volume of credit derivatives activities and whether those activities are hedged. For some banking organizations, the proposed total leverage exposure may increase by less than the amount estimated above, and in some cases may result in a decrease in total leverage exposure.

For the eight bank holding companies subject to the eSLR standards, supervisory estimates suggest that the proposed changes to the definition of total leverage exposure would result in an approximately 8.5 percent aggregate increase in total leverage exposure compared to the definition of total leverage exposure in the 2013 revised capital rule. In order to avoid being subject to limitations on capital distributions and discretionary bonus payments, these institutions would need to raise in the aggregate over $46 billion in tier 1 capital to exceed a 5 percent supplementary leverage ratio under the proposed definition of total leverage exposure, over and above the amount they would need to raise if the definition of total leverage exposure in the 2013 revised capital rule remained unchanged.

The agencies are seeking comment on the regulatory capital impact of the proposed changes to total leverage exposure on advanced approaches banking organizations subject to the supplementary leverage ratio standard and banking organizations subject to the eSLR standards.

Question 19: How does the commenters' estimate of the potential regulatory capital impact under the proposed rule, compared to the regulatory capital impact under the eSLR standards final rule and the 2013 revised capital rule, differ from the agencies' impact estimate of the proposed rule?

Question 20: Do the proposed changes to the definition of total leverage exposure warrant any changes to the calibration of the minimum ratios, or the well-capitalized or buffer levels of the supplementary leverage ratio?

IV. Disclosures

The agencies have long supported meaningful public disclosure by banking organizations about their regulatory capital with a goal of improving market discipline and disclosing information in a comparable and consistent manner. The agencies' regulatory reports already incorporate reporting of the supplementary leverage ratio under the 2013 rule, effective January 1, 2015. Consistent with the BCBS 2014 revisions, the agencies are proposing to apply additional disclosure requirements for the calculation of the supplementary leverage ratio to top-tier advanced approaches banking organizations. The agencies believe that the proposed disclosures would enhance the transparency and consistency of reporting requirements for the supplementary leverage ratio by all internationally active banking organizations.

Specifically, under the proposed rule, banking organizations would complete two parts of a supplementary leverage ratio disclosure table. Part 1 is designed to summarize the differences between the total consolidated accounting assets reported on a banking organization's published financial statements and regulatory reports and the calculation of total leverage exposure. Part 2 is designed to collect information on the components of total leverage exposure in more detail, similar to the version of FFIEC 101, Schedule A taking effect in March 2014. The agencies plan to reconsider the regulatory reporting requirements of the supplementary leverage ratio on FFIEC 101, Schedule A, in the future, to reflect these disclosures.

[12] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 136. Section 619 prohibits banking entities from engaging in proprietary trading and having ownership interests in or sponsoring hedge funds or private equity funds. 12 U.S.C. 1851. Section 716 restricts the ability of insured depository institutions to engage in swaps. 12 U.S.C. 8305.

[13] The estimates were generated by using December 2013 CCAR data, December Y–9C data, and June 2013 Quantitative Impact Study data.

TABLE 13 TO SECTION 173 OF THE 2013 REVISED CAPITAL RULE—SUPPLEMENTARY LEVERAGE RATIO

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
Part 2: Summary comparison of accounting assets and total leverage exposure				
1 Total consolidated assets as reported in published financial statements. 2 Adjustment for investments in banking, financial, insurance or commercial entities that are consolidated for accounting purposes but outside the scope of regulatory consolidation. 3 Adjustment for fiduciary assets recognized on balance sheet but excluded from total leverage exposure. 4 Adjustment for derivative exposures. 5 Adjustment for repo-style transactions. 6 Adjustment for off-balance sheet exposures (that is, conversion to credit equivalent amounts of off-balance sheet exposures). 7 Other adjustments. 8 Total leverage exposure.				
Part 2: Supplementary leverage ratio				
On-balance sheet exposures				
1 On-balance sheet assets (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions). 2 LESS: Amounts deducted from tier 1 capital. 3 Total on-balance sheet exposures (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions) (sum of lines 1 and 2).				
Derivative exposures				
4 Replacement cost for derivative exposures (that is, net of cash variation margin). 5 Add-on amounts for potential future exposure (PFE) for derivatives exposures. 6 Gross-up for cash collateral posted if deducted from the on-balance sheet assets, except for cash variation margin. 7 LESS: Deductions of receivable assets for cash variation margin posted in derivatives transactions, if included in on-balance sheet assets. 8 LESS: Exempted CCP leg of client-cleared transactions. 9 Effective notional principal amount of sold credit protection. 10 LESS: Effective notional principal amount offsets and PFE adjustments for sold credit protection. 11 Total derivative exposures (sum of lines 4 to 10).				
Repo-style transactions				
12 On-balance sheet assets for repo-style transactions, except include the gross value of receivables for reverse repurchase transactions. Exclude from this item the value of securities received in a security-for-security repo-style transaction where the securities lender has not sold or re-hypothecated the securities received. Include in this item the value of securities sold under a repo-style arrangement. 13 LESS: Reduction of the gross value of receivables in reverse repurchase transactions by cash payables in repurchase transactions under netting agreements. 14 Counterparty credit risk for all repo-style transactions. 15 Exposure for repo-style transactions where a banking organization acts as an agent. 16 Total exposures for repo-style transactions (sum of lines 12 to 15).				
Other off-balance sheet exposures				
17 Off-balance sheet exposures at gross notional amounts. 18 LESS: Adjustments for conversion to credit equivalent amounts. 19 Off-balance sheet exposures (sum of lines 17 and 18).				
Capital and total leverage exposure				
20 Tier 1 capital. 21 Total leverage exposure (sum of lines 3, 11, 16 and 19).				
Supplementary leverage ratio				
22 Supplementary leverage ratio	(in percent)			

Consistent with the BCBS 2014 revisions, if a banking organization has material differences between its total consolidated assets as reported in published financial statements and regulatory reports and its reported on-balance sheet assets for purposes of calculating the supplementary leverage ratio, the banking organization would be required to disclose and explain the source of the material differences. In addition, if a banking organization's supplementary leverage ratio changes significantly from one reporting period to another, the banking organization would be required to explain the key drivers of the material changes. Banking organizations would be required to disclose this information quarterly, using the exact template proposed in Table 13, and make the disclosures publicly available.

Question 21: Would any of the disclosure items in the table not be relevant for U.S. banking organizations?

Question 22: What is the operational burden of the proposed disclosure requirements?

Question 23: What, if any, modifications to the disclosure requirements should the agencies consider in order to reduce operational burden, clarify disclosure items, or align with other disclosure and reporting requirements?

V. Regulatory Analyses

A. Paperwork Reduction Act (PRA)

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC and FDIC will obtain OMB control numbers. The OMB control number for the Board is 7100–0313 and will be extended, with revision. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The proposed rule contains requirements subject to the PRA. The disclosure requirements are found in section ____.173. The disclosure requirements in section ____.172 are accounted for in section ____.173. This information collection requirement would be consistent with the BCBS 2014 revisions to the Basel III leverage ratio, as mentioned in the Abstract below. The respondents are for-profit financial institutions, not including small businesses (see the agencies' Regulatory Flexibility Analysis).

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this proposed rule that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503; by facsimile to 202–395–6974; or by email to: *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Disclosure Requirements Associated with Supplementary Leverage Ratio.

Frequency of Response: Quarterly.

Affected Public: Businesses or other for-profit.

Respondents

OCC: National banks and federal savings associations that are subject to the OCC's advanced approaches risk-based capital rules.

Board: State member banks, bank holding companies, and savings and loan holding companies that are subject to the Board' advanced approaches risk-based capital rules.

FDIC: Insured state nonmember banks and state savings associations that are subject to the FDIC's advanced approaches risk-based capital rules.

Abstract: All banking organizations that are subject to the agencies' advanced approaches risk-based capital rules (advanced approaches banking organizations), as defined in the 2013 revised capital rule, are required to disclose their supplementary leverage ratios beginning January 1, 2015. Advanced approaches banking organizations must report their supplementary leverage ratios on the applicable regulatory reports. Under the proposed rule, advanced approaches banking organizations would disclose two parts of a supplementary leverage ratio table beginning January 1, 2015. The proposed disclosure requirements are consistent with the proposed calculation of the supplementary leverage ratio in the proposed rule and with the 2014 BCBS revisions to the Basel III leverage ratio. The agencies believe that the proposed disclosures would enhance the transparency and consistency of reporting requirements for the supplementary leverage ratio by all internationally active organizations.

Disclosure Requirements

Section ____.173 states that advanced approaches banking organizations that have successfully completed parallel run must make the disclosures described in Tables 1 through 12. Under the proposed rule, advanced approaches banking organizations would be required to make the disclosures described in the proposed Table 13 beginning January 1, 2015, regardless of the parallel run status. The agencies do not anticipate an additional initial setup burden for complying with the proposed disclosure requirements because advanced approaches banking organizations are already subject to reporting the supplementary leverage ratio on the applicable regulatory reports.

Estimated Burden per Response

Disclosure Burden

Section ____.173—5 hours.

OCC

Number of respondents: 14.

Total estimated annual burden: 280 hours.

Board

Number of respondents: 20.

Current estimated annual burden: 413,986 hours.

Proposed revisions only estimated annual burden: 400 hours.

Total estimated annual burden: 414,386 hours.

FDIC

Number of respondents: 8.

Total estimated annual burden: 160 hours.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory Flexibility Act analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $500 million or less) or to certify that the rule will not have a significant economic impact on a substantial number of small entities.

Using the SBA's size standards, as of December 31, 2013, the OCC supervised 1,195 small entities.[14]

As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, the proposed rule would apply only to advanced approaches banking organizations. Advanced approaches banking organization is defined to include a national bank or Federal savings associations that has, or is a subsidiary of a bank holding company or savings and loan holding company that has, total consolidated assets of $250 billion or more, total consolidated on-balance sheet foreign exposure of $10 billion or more, or that has elected to use the advanced approaches framework. After considering the SBA's size standards and General Principals of Affiliation to identify small entities, the OCC determined that no small national banks or Federal savings associations are advanced approaches banking organizations. Because the proposed rule applies only to advanced approaches banking organizations, it does not impact any OCC-supervised small entities. Therefore, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed above, this proposed rule would amend the calculation of total leverage exposure in sections 2 and 10 of the 2013 revised capital rule, and amend sections 172 and 173 of the rule by adding additional disclosure requirements. These amendments would implement changes in line with the BCBS 2014 revisions.

Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization).[15] As of December 31, 2013, there were approximately 627 small state member banks. As of December 31, 2013, there were approximately 3,676 small bank holding companies and approximately 268 small savings and loan holding companies.[16]

The proposed rule would apply only to advanced approaches banking organizations, which, generally, are banking organizations with total consolidated assets of $250 billion or more, that have total consolidated on-balance sheet foreign exposure of $10 billion or more, are a subsidiary of an advanced approaches depository institution, or that elect to use the advanced approaches framework. Currently, no small top-tier bank holding company, top-tier savings and loan holding company, or state member bank is an advanced approaches banking organization, so there would be no additional projected compliance requirements imposed on small bank holding companies, savings and loan holding companies, or state member banks. The Board expects that any small bank holding companies, savings and loan holding companies, or state member banks that would be covered by this proposed rule would rely on its parent banking organization for compliance and would not bear additional costs.

The Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

FDIC: The RFA requires an agency to provide an IRFA with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $500 million or less).[17]

As described above in this preamble, the proposed rule would amend the definition of total leverage exposure in section 2 of the 2013 revised capital rule, the methodology for determining total leverage exposure under section 10 of the 2013 revised capital rule, and add an additional disclosure requirement in sections 172 and 173 of the 2013 revised capital rule. All of these changes would apply only to advanced approaches banking organizations. Generally, the advanced approaches framework applies to banking organizations that have consolidated total assets equal to $250 billion or more; have consolidated total on-balance sheet foreign exposure equal to $10 billion or more; are a subsidiary of a depository institution that uses the advanced approaches framework; or elects to use the advanced approaches framework.

As of December 31, 2013, based on a $500 million threshold, 1 (out of 3,394) small state nonmember banks and no (out of 303) small state savings associations were under the advanced approaches framework. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Reform Act) provides that an agency that is subject to the Unfunded Mandates Act

[14] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $500 million and $35.5 million, respectively. 78 FR 37409 (June 20, 2013). Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity. The OCC used December 31, 2013, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[15] *See* 13 CFR 121.201. Effective July 22, 2013, the Small Business Administration revised the size standards for banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

[16] Under the prior Small Business Administration threshold of $175 million in assets, as of March 31, 2013 the Board supervised approximately 369 small state member banks. As of December 31, 2013, there were approximately 2,259 small bank holding companies.

[17] Effective July 22, 2013, the SBA revised the size standards for banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

must prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted for inflation) or more in any one year. The current inflation-adjusted expenditure threshold is $141 million. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $141 million or more. The OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. When the proposed rule is published in the **Federal Register**, the full text of the OCC's analyses will available at: *http://www.regulations.gov,* Docket ID: OCC–2014–0008.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 93a, 1462, 1462a, 1463, 1464, 3907, 3909, 1831o, and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 3 of chapter I of title 12, Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. In § 3.2, revise the definition of ''total leverage exposure'' to read as follows:

§ 3.2 Definitions.

* * * * *

Total leverage exposure is defined in § 3.10(c)(4)(ii).

* * * * *

■ 3. Revise § 3.10(c)(4) to read as follows:

§ 3.10. Minimum capital requirements.

* * * * *

(c) * * *

(4) Supplementary leverage ratio. (i) An advanced approaches national bank's or Federal savings association's supplementary leverage ratio is the ratio of its tier 1 capital calculated as of the last day of each reporting quarter to total leverage exposure calculated as the simple arithmetic mean of the total leverage exposure calculated as of each day of the reporting quarter, using the applicable deductions under § 3.22(a), (c), and (d) as of the last day of the previous reporting quarter.

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described as follows in paragraphs (c)(4)(ii)(A) through (c)(4)(ii)(H) of this section, as adjusted by any applicable requirement for clearing member national banks and Federal savings associations described in paragraph (c)(4)(ii)(I):

(A) The balance sheet carrying value of all of the national bank or Federal savings association's on-balance sheet assets, plus the value of securities sold under a repo-style arrangement that are not included on-balance sheet, *less* amounts deducted from tier 1 capital under § 3.22(a), (c), and (d), and less the value of securities received in security-for-security repo-style transactions, where the national bank or Federal savings association acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received;

(B) The PFE for each derivative contract (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section) to which the national bank or Federal savings association is a counterparty (or each single-product netting set of such transactions) as determined under § 3.34, but without regard to § 3.34(b). A national bank or Federal savings association may choose to adjust the PFE for all credit derivatives or other similar instruments through which it provides credit protection, as included in paragraph (c)(4)(ii)(D) of this section, when calculating the PFE under § 3.34, but without regard to § 3.34(b), provided that it does not adjust the net-to-gross ratio (NGR). A national bank or Federal savings association that makes such election must do so consistently over time for the calculation of the PFE for all credit derivative contracts or similar instruments through which it provides credit protection;

(C) The amount of cash collateral that is received from a counterparty to a derivative contract and that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to a counterparty to a derivative contract and that has reduced the national bank or Federal savings association's on-balance sheet assets, except if such cash collateral is all or part of variation margin that satisfies the following requirements in paragraphs (c)(4)(ii)(C)(*1*) through (c)(4)(ii)(C)(*5*) of this section. Cash variation margin that satisfies the requirements in paragraphs (c)(4)(ii)(C)(*1*) through (c)(4)(ii)(C)(*5*) of this section may only be used to reduce the current credit exposure of the derivative contract, calculated as described in § 3.34(a), and not the PFE. In the calculation of the NGR described in § 3.34(a)(2)(ii)(B), cash variation

margin that satisfies the requirements in paragraphs (c)(4)(ii)(C)(*1*) through (*5*) of this section may not reduce the net current credit exposure or the gross current credit exposure.

(*1*) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated;

(*2*) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(*3*) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(*4*) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement, the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(*5*) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction. The qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(D) The effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of a credit derivative, or other similar instrument, through which the national bank or Federal savings association provides credit protection, provided that:

(*1*) The national bank or Federal savings association may reduce the effective notional principal amount of the credit derivative by the amount of any reduction in the mark-to-fair value of the credit derivative if the reduction is recognized in common equity tier 1 capital;

(*2*) The national bank or Federal savings association may reduce the effective notional principal amount of the credit derivative by the effective notional principal amount of a purchased credit derivative or other similar instrument, provided that the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the credit derivative through which the national bank or Federal savings association provides credit protection and that:

(*i*) With respect to a credit derivative that references a single exposure, the reference exposure of the purchased credit derivative is to the same legal entity and ranks *pari passu* with, or is junior to, the reference exposure of the credit derivative through which the national bank or Federal savings association provides credit protection; or

(*ii*) With respect to a credit derivative that references multiple exposures, such as securitization exposures, the reference exposures of the purchased credit derivative are to the same legal entities and rank *pari passu* with the reference exposures of the credit derivative through which the national bank or Federal savings association provides credit protection, and the level of seniority of the purchased credit derivative ranks *pari passu* to the level of seniority of the credit derivative through which the national bank or Federal savings association provides credit protection.

(*iii*) Where a national bank or Federal savings association has reduced the effective notional amount of a credit derivative through which the national bank or Federal savings association provides credit protection in accordance with paragraph (c)(4)(ii)(D)(*1*) of this section, the national bank or Federal savings association must also reduce the effective notional principal amount of a purchased credit derivative, used to offset the credit derivative through which the national bank or Federal savings association provides credit protection, by the amount of any increase in the mark-to-fair value of the purchased credit derivative that is recognized in common equity tier 1 capital; and

(*iv*) Where the national bank or Federal savings association purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the national bank or Federal savings association provides credit protection in net income, but does not record offsetting deterioration in the mark-to-fair value of the credit derivative through which the national bank or Federal savings association provides credit protection in net income (either through reductions in fair value or by additions to reserves), the national bank or Federal savings association may not use the purchased credit protection to offset the effective notional principal amount of the credit derivative through which the national bank or Federal savings association provides credit protection.

(E) Where a national bank or Federal savings association acting as a principal has more than one repo-style transaction with the same counterparty and has applied the GAAP offset for repo-style transactions, and the criteria in paragraphs (c)(4)(ii)(E)(*1*) through (*3*) of this section are not satisfied, the gross value of receivables associated with the repo-style transactions *less* any on-balance sheet receivables amount associated with these repo-style transactions included under paragraph (c)(4)(ii)(A) of this section.

(*1*) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(*2*) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(*3*) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement. That is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date. To achieve this result, both transactions must be settled through the same settlement system and the settlement arrangements must be supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

(F) The counterparty credit risk of a repo-style transaction, including where the national bank or Federal savings association acts as an agent for a repo-style transaction, calculated as follows:

(*1*) If the transaction is not subject to a qualifying master netting agreement, the counterparty credit risk (E*) for transactions with a counterparty must be calculated on a transaction by transaction basis, such that each transaction *i* is treated as its own netting set, in accordance with the following formula, where E_i is the fair value of the

instruments, gold, or cash that the national bank or Federal savings association has lent, sold subject to repurchase, or provided as collateral to the counterparty, and C_i is the fair value of the instruments, gold, or cash that the national bank or Federal savings association has borrowed, purchased subject to resale, or received as collateral from the counterparty:

$E_i^* = \max\{0, [E_i - C_i]\}$; and

(*2*) If the transaction is subject to a qualifying master netting agreement, the counterparty credit risk (E^*) must be calculated as the greater of zero and the total fair value of the instruments, gold, or cash that the national bank or Federal savings association has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying master netting agreement (ΣE_i), less the total fair value of the instruments, gold, or cash that the national bank or Federal savings association borrowed, purchased subject to resale or received as collateral from the counterparty for those transactions (ΣC_i), in accordance with the following formula:

$E^* = \max\{0, [\Sigma E_i - \Sigma C_i]\}$

(G) If a national bank or Federal savings association acting as an agent for a repo-style transaction provides a guarantee to a customer of the security or cash its customer has lent or borrowed with respect to the performance of the customer's counterparty and the guarantee is not limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, the amount of the guarantee that is greater than the difference between the fair value of the security or cash its customer has lent and the value of the collateral the borrower has provided.

(H) The credit equivalent amount of all off-balance sheet exposures of the national bank or Federal savings association, excluding repo-style transactions and derivatives, determined using the applicable credit conversation factor under § 3.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent.

(I) Requirements for a national bank or Federal savings association that is a clearing member:

(*1*) A clearing member national bank or Federal savings association that guarantees the performance of a clearing member client with respect to a cleared transaction must treat its exposure to the clearing member client as a derivative contract for purposes of determining its total leverage exposure.

(*2*) A clearing member national bank or Federal savings association that guarantees the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client must treat its exposure to the CCP as a derivative contract for purposes of determining its total leverage exposure. A clearing member national bank or Federal savings association that does not guarantee the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client may exclude its exposure to the CCP for purposes of determining its total leverage exposure.

* * * * *

■ 4. Section 3.172 is amended by adding paragraph (d) to read as follows:

§ 3.172 Disclosure requirements.

* * * * *

(d) Except as otherwise provided in paragraph (b) of this section, an advanced approaches national bank or Federal savings association must publicly disclose each quarter its supplementary leverage ratio and its components as calculated under subpart B of this part in compliance with paragraph (c) of this section; provided, however, the disclosures required under this paragraph are required without regard to whether the national bank or Federal savings association has completed the parallel run process and has received notification from the OCC pursuant to § 3.121(d).

■ 5. Section 3.173 is amended by:

■ a. Revising the introductory text of paragraph (a); and

■ b. Adding paragraph (c) and Table 13 to § 3.173.

The revision and additions are set forth below.

§ 3.173 Disclosures by certain advanced approaches national banks and Federal savings associations.

(a) Except as provided in § 3.172(b), a national bank or Federal savings association described in § 3.172(b) must make the disclosures described in Tables 1 through 13 to § 3.173. The national bank or Federal savings association must make the disclosures required under Tables 1 through 12 publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on January 1, 2014. The national bank or Federal savings association must make the disclosures required under Table 13 publicly available beginning on January 1, 2015.

* * * * *

(c) Except as provided in § 3.172(b), a national bank or Federal savings association described in § 3.172(d) must make the disclosure described in Table 13 to § 3.173; provided, however, the disclosures required under this paragraph are required without regard to whether the national bank or Federal savings association has completed the parallel run process and has received notification from the OCC pursuant to § 3.121(d). The national bank or Federal savings association must make these disclosures publicly available beginning on January 1, 2015.

TABLE 13 TO § 3.173

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
Part 1: Summary comparison of accounting assets and total leverage exposure				
1 Total consolidated assets as reported in published financial statements.				
2 Adjustment for investments in banking, financial, insurance or commercial entities that are consolidated for accounting purposes but outside the scope of regulatory consolidation.				
3 Adjustment for fiduciary assets recognized on balance sheet but excluded from total leverage exposure.				
4 Adjustment for derivative exposures.				
5 Adjustment for repo-style transactions.				
6 Adjustment for off-balance sheet exposures (that is, conversion to credit equivalent amounts of off-balance sheet exposures).				
7 Other adjustments.				

TABLE 13 TO § 3.173—Continued

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
8 Total leverage exposure.				
Part 2: Supplementary leverage ratio				
On-balance sheet exposures				
1 On-balance sheet assets (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions). 2 LESS: Amounts deducted from tier 1 capital. 3 Total on-balance sheet exposures (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions) (sum of lines 1 and 2).				
Derivative exposures				
4 Replacement cost for derivative exposures (that is, net of cash variation margin). 5 Add-on amounts for potential future exposure (PFE) for derivatives exposures. 6 Gross-up for cash collateral posted if deducted from the on-balance sheet assets, except for cash variation margin. 7 LESS: Deductions of receivable assets for cash variation margin posted in derivatives transactions, if included in on-balance sheet assets. 8 LESS: Exempted CCP leg of client-cleared transactions. 9 Effective notional principal amount of sold credit protection. 10 LESS: Effective notional principal amount offsets and PFE adjustments for sold credit protection. 11 Total derivative exposures (sum of lines 4 to 10).				
Repo-style transactions				
12 On-balance sheet assets for repo-style transactions, except include the gross value of receivables for reverse repurchase transactions. Exclude from this item the value of securities received in a security-for-security repo-style transaction where the securities lender has not sold or re-hypothecated the securities received. Include in this item the value of securities sold under a repo-style arrangement. 13 LESS: Reduction of the gross value of receivables in reverse repurchase transactions by cash payables in repurchase transactions under netting agreements. 14 Counterparty credit risk for all repo-style transactions. 15 Exposure for repo-style transactions where a banking organization acts as an agent. 16 Total exposures for repo-style transactions (sum of lines 12 to 15).				
Other off-balance sheet exposures				
17 Off-balance sheet exposures at gross notional amounts. 18 LESS: Adjustments for conversion to credit equivalent amounts. 19 Off-balance sheet exposures (sum of lines 17 and 18).				
Capital and total leverage exposure				
20 Tier 1 capital. 21 Total leverage exposure (sum of lines 3, 11, 16 and 19).				
Supplementary leverage ratio				
22 Supplementary leverage ratio	(in percent)			

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BOARD-RELATED INSTITUTIONS

■ 6. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 7. In § 217.2, revise the definition of ''total leverage exposure'' to read as follows:

§ 217.2 Definitions.

* * * * *

Total leverage exposure is defined in § 217.10(c)(4)(ii).

* * * * *

■ 8. Revise § 217.10(c)(4) to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) *Supplementary leverage ratio.* (i) An advanced approaches Board-regulated institution's supplementary leverage ratio is the ratio of its tier 1 capital calculated as of the last day of each reporting quarter to total leverage exposure calculated as the arithmetic mean of the total leverage exposure calculated as of each day of the reporting quarter, using the applicable deductions under § 217.22(a), (c), and (d) as of the last day of the previous reporting quarter.

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described as follows in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted by any applicable requirement for a clearing member Board-regulated institution described in paragraph (c)(4)(ii)(I):

(A) The balance sheet carrying value of all of the Board-regulated institution's on-balance sheet assets, *plus* the value of securities sold under a repo-style arrangement that are not included on balance sheet, *less* amounts deducted from tier 1 capital under § 217.22 (a), (c), and (d), and *less* the value of securities received in security-for-security repo-style transactions, where the Board-regulated institution acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received;

(B) The PFE for each derivative contract (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section) to which the Board-regulated institution is a counterparty (or each single-product netting set of such transactions) as determined under § 217.34, but without regard to § 217.34(b). A Board-regulated institution may choose to adjust the PFE for all credit derivatives or other similar instruments through which it provides credit protection, as included in paragraph (c)(4)(ii)(D) of this section, when calculating the PFE under § 217.34, but without regard to § 217.34(b), provided that it does not adjust the net-to-gross ratio (NGR). A Board-regulated institution that makes such election must do so consistently over time for the calculation of the PFE for all credit derivative contracts or similar instruments through which it provides credit protection;

(C) The amount of cash collateral that is received from a counterparty to a derivative contract and that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to a counterparty to a derivative contract and that has reduced the banking organization's on-balance sheet assets, except if such cash collateral is all or part of variation margin that satisfies the following requirements in paragraphs (c)(4)(ii)(C)(*1*) through (*5*) of this section. Cash variation margin that satisfies the requirements in paragraphs (c)(4)(ii)(C)(*1*) through (*5*) of this section may only be used to reduce the current credit exposure of the derivative contract, calculated as described in § 217.34(a), and not the PFE. In the calculation of the NGR described in § 217.34(a)(2)(ii)(B), cash variation margin that satisfies the requirements in paragraphs (c)(4)(ii)(C)(*1*) through (*5*) of this section may not reduce the net current credit exposure or the gross current credit exposure.

(*1*) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated;

(*2*) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(*3*) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contract, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(*4*) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract. For purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement, the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(*5*) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction. The qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(D) The effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of a credit derivative, or other similar instrument, through which the Board-regulated institution provides credit protection, provided that:

(*1*) The Board-regulated institution may reduce the effective notional principal amount of the credit derivative by the amount of any reduction in the mark-to-fair value of the credit derivative if the reduction is recognized in common equity tier 1 capital;

(*2*) The Board-regulated institution may reduce the effective notional principal amount of the credit derivative by the effective notional principal amount of a purchased credit derivative, or other similar instrument, provided that the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the credit derivative through which the Board-regulated institution provides credit protection and that:

(*i*) With respect to a credit derivative that references a single exposure, the reference exposure of the purchased credit derivative is to the same legal entity and ranks *pari passu* with, or is junior to, the reference exposure of the credit derivative through which the Board-regulated institution provides credit protection; or

(*ii*) With respect to a credit derivative that references multiple exposures, such as securitization exposures, the reference exposures of the purchased credit derivative are to the same legal entities and rank *pari passu* with the reference exposures of the credit derivative through which the Board-regulated institution provides credit protection, and the level of seniority of the purchased credit derivative ranks *pari passu* to the level of seniority of the credit derivative under which the Board-regulated institution provides credit protection.

(*iii*) Where a Board-regulated institution has reduced the effective notional principal amount of a credit derivative through which the Board-regulated institution provides credit protection in accordance with paragraph (c)(4)(ii)(D)(*1*) of this section, the Board-regulated institution must also reduce the effective notional principal amount of a purchased credit derivative, used to offset the credit derivative through which the Board-regulated institution provides credit protection, by the amount of any increase in the mark-to-fair value of the purchased credit derivative that is recognized in common equity tier 1 capital; and

(*iv*) Where the Board-regulated institution purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the Board-regulated institution provides credit

protection in net income, but does not record offsetting deterioration in the mark-to-fair value of the credit derivative through which the Board-regulated institution provides credit protection in net income (either through reductions in fair value or by additions to reserves), the Board-regulated institution may not use the purchased credit protection to offset the effective notional principal amount of the credit derivative through which the Board-regulated institution provides credit protection.

(E) Where a Board-regulated institution acting as a principal has more than one repo-style transaction with the same counterparty and has applied the GAAP offset for repo-style transactions, and the criteria in paragraphs (c)(4)(ii)(E)(*1*) through (c)(4)(ii)(E)(*3*) of this section are not satisfied, the gross value of receivables associated with the repo-style transactions *less* any on-balance sheet receivables amount associated with these repo-style transactions included under paragraph (c)(4)(ii)(A) of this section.

(*1*) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(*2*) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(*3*) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement. That is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date. To achieve this result, both transactions must be settled through the same settlement system and the settlement arrangements must be supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

(F) The counterparty credit risk of a repo-style transaction, including where the Board-regulated institution acts as an agent for a repo-style transaction, calculated as follows:

(*1*) If the transaction is not subject to a qualifying master netting agreement, the counterparty credit risk (E*) for transactions with a counterparty must be calculated on a transaction by transaction basis, such that each transaction *i* is treated as its own netting set, in accordance with the following formula, where E_i is the fair value of the instruments, gold, or cash that the Board-regulated institution has lent, sold subject to repurchase, or provided as collateral to the counterparty, and C_i is the fair value of the instruments, gold, or cash that the Board-regulated institution has borrowed, purchased subject to resale, or received as collateral from the counterparty:

$E_i^* = \max\{0, [E_i - C_i]\}$; and

(*2*) If the transaction is subject to a qualifying master netting agreement, the counterparty credit risk (E*) must be calculated as the greater of zero and the total fair value of the instruments, gold, or cash that the Board-regulated institution has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying master netting agreement (ΣE_i), less the total fair value of the instruments, gold, or cash that the Board-regulated institution borrowed, purchased subject to resale or received as collateral from the counterparty for those transactions (ΣC_i), in accordance with the following formula:

$E^* = \max\{0, [\Sigma E_i - \Sigma C_i]\}$

(G) If a Board-regulated institution acting as an agent for a repo-style transaction provides a guarantee to a customer of the security or cash its customer has lent or borrowed with respect to the performance of the customer's counterparty and the guarantee is not limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, the amount of the guarantee that is greater than the difference between the fair value of the security or cash its customer has lent and the value of the collateral the borrower has provided.

(H) The credit equivalent amount of all off-balance sheet exposures of a Board-regulated institution, excluding repo-style transactions and derivatives, determined using the applicable credit conversation factor under § 217.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent.

(I) Requirements for a Board-regulated institution that is a clearing member:

(*1*) A clearing member Board-regulated institution that guarantees the performance of a clearing member client with respect to a cleared transaction must treat its exposure to the clearing member client as a derivative contract for purposes of determining its total leverage exposure.

(*2*) A clearing member Board-regulated institution that guarantees the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client must treat its exposure to the CCP as a derivative contract for purposes of determining its total leverage exposure. A clearing member Board-regulated institution that does not guarantee the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client may exclude its exposure to the CCP for purposes of determining its total leverage exposure.

* * * * *

■ 9. Amend § 217.172 by adding a new paragraph (d) to read as follows:

§ 217.172 Disclosure requirements.

* * * * *

(d) Except as otherwise provided in § 217.2 (b), an advanced approaches Board-regulated institution must publicly disclose each quarter its supplementary leverage ratio and its components as calculated under subpart B of this part in compliance with paragraph (c) of this section; provided, however, the disclosures required under this paragraph are required without regard to whether the Board-regulated institution has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d).

■ 10. Amend § 217.173 by adding a new paragraph (c) and Table 13 to § 217.173 to read as follows:

§ 217.173 Disclosures by certain advanced approaches Board-regulated institutions.

* * * * *

(c) Except as otherwise provided in § 217.172(b), a Board-regulated institution described in § 217.172(d) must make the disclosures described in Table 13 to § 217.173; provided, however, the disclosures required under this paragraph are required without regard to whether the Board-regulated institution has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d). The Board-regulated institution must make these disclosures publicly available beginning on January 1, 2015.

TABLE 13 TO § 217.173—SUPPLEMENTARY LEVERAGE RATIO

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
Part 1: Summary comparison of accounting assets and total leverage exposure				
1 Total consolidated assets as reported in published financial statements. 2 Adjustment for investments in banking, financial, insurance or commercial entities that are consolidated for accounting purposes but outside the scope of regulatory consolidation. 3 Adjustment for fiduciary assets recognized on balance sheet but excluded from total leverage exposure. 4 Adjustment for derivative exposures. 5 Adjustment for repo-style transactions. 6 Adjustment for off-balance sheet exposures (that is, conversion to credit equivalent amounts of off-balance sheet exposures). 7 Other adjustments. 8 Total leverage exposure.				
Part 2: Supplementary leverage ratio				
On-balance sheet exposures				
1 On-balance sheet assets (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions). 2 LESS: Amounts deducted from tier 1 capital. 3 Total on-balance sheet exposures (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions) (sum of lines 1 and 2).				
Derivative exposures				
4 Replacement cost for derivative exposures (that is, net of cash variation margin). 5 Add-on amounts for potential future exposure (PFE) for derivatives exposures. 6 Gross-up for cash collateral posted if deducted from the on-balance sheet assets, except for cash variation margin. 7 LESS: Deductions of receivable assets for cash variation margin posted in derivatives transactions, if included in on-balance sheet assets. 8 LESS: Exempted CCP leg of client-cleared transactions. 9 Effective notional principal amount of sold credit protection. 10 LESS: Effective notional principal amount offsets and PFE adjustments for sold credit protection. 11 Total derivative exposures (sum of lines 4 to 10).				
Repo-style transactions				
12 On-balance sheet assets for repo-style transactions, except include the gross value of receivables for reverse repurchase transactions. Exclude from this item the value of securities received in a security-for-security repo-style transaction where the securities lender has not sold or re-hypothecated the securities received. Include in this item the value of securities sold under a repo-style arrangement. 13 LESS: Reduction of the gross value of receivables in reverse repurchase transactions by cash payables in repurchase transactions under netting agreements. 14 Counterparty credit risk for all repo-style transactions. 15 Exposure for repo-style transactions where a banking organization acts as an agent. 16 Total exposures for repo-style transactions (sum of lines 12 to 15).				
Other off-balance sheet exposures				
17 Off-balance sheet exposures at gross notional amounts. 18 LESS: Adjustments for conversion to credit equivalent amounts. 19 Off-balance sheet exposures (sum of lines 17 and 18).				
Capital and total leverage exposure				
20 Tier 1 capital. 21 Total leverage exposure (sum of lines 3, 11, 16 and 19).				
Supplementary leverage ratio				
22 Supplementary leverage ratio	(in percent)			

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 324 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY

■ 11. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 12. In § 324.2, revise the definition of ''total leverage exposure'' to read as follows:

§ 324.2 Definitions.

* * * * *

Total leverage exposure is defined in § 324.10(c)(4)(ii).

* * * * *

■ 13. Revise § 324.10(c)(4) to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) Supplementary leverage ratio. (i) An advanced approaches FDIC-supervised institution's supplementary leverage ratio is the ratio of its tier 1 capital calculated as of the last day of each reporting quarter to total leverage exposure calculated as the arithmetic mean of the total leverage exposure calculated as of each day of the reporting quarter, using the applicable deductions under § 324.22(a), (c), and (d) as of the last day of the previous reporting quarter.

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described as follows in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted by any applicable requirement for clearing member FDIC-supervised institutions described in paragraph (c)(4)(ii)(I):

(A) The balance sheet carrying value of all of the FDIC-supervised institution's on-balance sheet assets, *plus* the value of securities sold under a repo-style arrangement that are not included on-balance sheet, *less* amounts deducted from tier 1 capital under § 324.22(a), (c), and (d), and *less* the value of securities received in security-for-security repo-style transactions, where the FDIC-supervised institution acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received;

(B) The PFE for each derivative contract (including cleared transactions except as provided in paragraph (c)(4)(ii)(I) of this section) to which the FDIC-supervised institution is a counterparty (or each single-product netting set of such transactions) as determined under § 324.34, but without regard to § 324.34(b). An FDIC-supervised institution may choose to adjust the PFE for all credit derivatives or other similar instruments through which it provides credit protection, as included in paragraph (c)(4)(ii)(D) of this section, when calculating the PFE under § 324.34, but without regard to § 324.34(b), provided that it does not adjust the net-to-gross ratio (NGR). An FDIC-supervised institution that makes such election must do so consistently over time for the calculation of the PFE for all credit derivative contracts or similar instruments through which it provides credit protection;

(C) The amount of cash collateral that is received from a counterparty to a derivative contract and that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to a counterparty to a derivative contract and that has reduced the FDIC-supervised institution's on-balance sheet assets, except if such cash collateral is all or part of variation margin that satisfies the following requirements in paragraphs (c)(4)(ii)(C)(*1*) through (*5*) of this section. Cash variation margin that satisfies the requirements in paragraphs (c)(4)(ii)(C)*(1)* through (*5*) of this section may only be used to reduce the current credit exposure of the derivative contract, calculated as described in section 324.34(a)(2)(ii)(B), and not the PFE. In the calculation of the NGR described in § 324.34(a)(2)(ii)(B), cash variation margin that satisfies the requirements in paragraphs (a)(2)(ii)(C)*(1)* through *(5)* of this section may not reduce the net current credit exposure or the gross current credit exposure.

(1) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated;

(2) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(3) The variation margin transferred under the derivative contract or the governing rules for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(4) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(5) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction. The qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(D) The effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of a credit derivative, or other similar instrument, through which the FDIC-supervised institution provides credit protection, provided that:

(1) The FDIC-supervised institution may reduce the effective notional principal amount of the credit derivative by the amount of any reduction in the mark-to-fair value of the credit derivative if the reduction is recognized in common equity tier 1 capital;

(2) The FDIC-supervised institution may reduce the effective notional principal amount of the credit derivative by the effective notional principal amount of a purchased credit derivative or other similar instrument, provided that the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the credit derivative through which the FDIC-supervised institution provides credit protection and that:

(i) With respect to a credit derivative that references a single exposure, the

reference exposure of the purchased credit derivative is to the same legal entity and ranks *pari passu* with, or is junior to, the reference exposure of the credit derivative through which the FDIC-supervised institution provides credit protection; or

(ii) With respect to a credit derivative that references multiple exposures, such as securitization exposures, the reference exposures of the purchased credit derivative are to the same legal entities and rank *pari passu* with the reference exposures of the credit derivative through which the FDIC-supervised institution provides credit protection, and the level of seniority of the purchased credit derivative ranks *pari passu* to the level of seniority of the credit derivative through which the FDIC-supervised institution provides credit protection.

(iii) Where an FDIC-supervised institution has reduced the effective notional amount of a credit derivative through which the FDIC-supervised institution provides credit protection in accordance with paragraph (c)(4)(ii)(D)*(1)* of this section, the FDIC-supervised institution must also reduce the effective notional principal amount of a purchased credit derivative, used to offset the credit derivative through which the FDIC-supervised institution provides credit protection, by the amount of any increase in the mark-to-fair value of the purchased credit derivative that is recognized in common equity tier 1 capital; and

(iv) Where the FDIC-supervised institution purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the FDIC-supervised institution provides credit protection in net income, but does not record offsetting deterioration in the mark-to-fair value of the credit derivative through which the FDIC-supervised institution provides credit protection in net income (either through reductions in fair value or by additions to reserves), the FDIC-supervised institution may not use the purchased credit protection to offset the effective notional principal amount of the related credit derivative through which the FDIC-supervised institution provides credit protection.

(E) Where an FDIC-supervised institution acting as a principal has more than one repo-style transaction with the same counterparty and has applied the GAAP offset for repo-style transactions, and the criteria in paragraphs (c)(4)(ii)(E)*(1)* through *(3)* of this section are not satisfied, the gross value of receivables associated with the repo-style transactions *less* any on-balance sheet receivables amount associated with these repo-style transactions included under paragraph (c)(4)(ii)(A) of this section.

(1) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(2) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(3) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement. That is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date. To achieve this result, both transactions must be settled through the same settlement system and the settlement arrangements must be supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

(F) The counterparty credit risk of a repo-style transaction, including where the FDIC-supervised institution acts as an agent for a repo-style transaction, calculated as follows:

(1) If the transaction is not subject to a qualifying master netting agreement, the counterparty credit risk (E*) for transactions with a counterparty must be calculated on a transaction by transaction basis, such that each transaction *i* is treated as its own netting set, in accordance with the following formula, where E_i is the fair value of the instruments, gold, or cash that the FDIC-supervised institution has lent, sold subject to repurchase, or provided as collateral to the counterparty, and C_i is the fair value of the instruments, gold, or cash that the FDIC-supervised institution has borrowed, purchased subject to resale, or received as collateral from the counterparty:

$E_i^* = \max\{0, [E_i - C_i]\}$; and

(2) If the transaction is subject to a qualifying master netting agreement, the counterparty credit risk (E*) must be calculated as the greater of zero and the total fair value of the instruments, gold, or cash that the FDIC-supervised institution has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying master netting agreement (ΣE_i), *less* the total fair value of the instruments, gold, or cash that the FDIC-supervised institution borrowed, purchased subject to resale or received as collateral from the counterparty for those transactions (ΣC_i), in accordance with the following formula:

$E^* = \max\{0, [\Sigma E_i - \Sigma C_i]\}$

(G) If an FDIC-supervised institution acting as an agent for a repo-style transaction provides a guarantee to a customer of the security or cash its customer has lent or borrowed with respect to the performance of the customer's counterparty and the guarantee is not limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, the amount of the guarantee that is greater than the difference between the fair value of the security or cash its customer has lent and the value of the collateral the borrower has provided.

(H) The credit equivalent amount of all off-balance sheet exposures of the FDIC-supervised institution, excluding repo-style transactions and derivatives, determined using the applicable credit conversation factor under § 324.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent.

(I) Requirements for an FDIC-supervised institution that is a clearing member:

(*1*) A clearing member FDIC-supervised institution that guarantees the performance of a clearing member client with respect to a cleared transaction must treat its exposure to the clearing member client as a derivative contract for purposes of determining its total leverage exposure.

(*2*) A clearing member FDIC-supervised institution that guarantees the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client must treat its exposure to the CCP as a derivative contract for purposes of determining its total leverage exposure. A clearing member FDIC-supervised institution that does not guarantee the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client may exclude its exposure to the CCP for purposes of determining its total leverage exposure.

■ 14. Section 324.172 is amended by adding paragraph (d) to read as follows:

§ 324.172 Disclosure requirements.

* * * * *

(d) Except as otherwise provided in paragraph (b) of this section, an

advanced approaches FDIC-supervised institution must publicly disclose each quarter its supplementary leverage ratio and its components as calculated under subpart B of this part in compliance with paragraph (c) of this section; provided, however, the disclosures required under this paragraph are required without regard to whether the FDIC-supervised institution has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d).

■ 15. Amend § 324.173 as follows:

■ a. Revise the introductory text of paragraph (a); and

■ b. Add paragraph (c) and Table 13 to § 3.173.

The revision and additions are set forth below.

§ 324.173 Disclosures by certain advanced approaches FDIC-supervised institutions.

(a) Except as provided in § 324.172(b), an FDIC-supervised institution described in § 324.172(b) must make the disclosures described in Tables 1 through 13 to § 324.173. The FDIC-supervised institution must make the disclosures required under Tables 1 through 12 publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on January 1, 2014. The FDIC-supervised institution must make the disclosures required under Table 13 publicly available beginning on January 1, 2015.

* * * * *

(c) Except as provided in § 324.172(b), an FDIC-supervised institution described in § 324.172(d) must make the disclosures described in Table 13 to § 324.173; provided, however, the disclosures required under this paragraph are required without regard to whether the FDIC-supervised institution has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d). The FDIC-supervised institution must make these disclosures publicly available beginning on January 1, 2015.

TABLE 13 TO § 324.173 SUPPLEMENTARY LEVERAGE RATIO

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
Part 1: Summary comparison of accounting assets and total leverage exposure				
1 Total consolidated assets as reported in published financial statements.				
2 Adjustment for investments in banking, financial, insurance or commercial entities that are consolidated for accounting purposes but outside the scope of regulatory consolidation.				
3 Adjustment for fiduciary assets recognized on balance sheet but excluded from total leverage exposure.				
4 Adjustment for derivative exposures.				
5 Adjustment for repo-style transactions.				
6 Adjustment for off-balance sheet exposures (that is, conversion to credit equivalent amounts of off-balance sheet exposures).				
7 Other adjustments.				
8 Total leverage exposure.				
Part 2: Supplementary leverage ratio				
On-balance sheet exposures				
1 On-balance sheet assets (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions).				
2 LESS: Amounts deducted from tier 1 capital.				
3 Total on-balance sheet exposures (excluding on-balance sheet assets for repo-style transactions and derivative exposures, but including cash collateral received in derivative transactions) (sum of lines 1 and 2).				
Derivative exposures				
4 Replacement cost for derivative exposures (that is, net of cash variation margin).				
5 Add-on amounts for potential future exposure (PFE) for derivatives exposures.				
6 Gross-up for cash collateral posted if deducted from the on-balance sheet assets, except for cash variation margin.				
7 LESS: Deductions of receivable assets for cash variation margin posted in derivatives transactions, if included in on-balance sheet assets.				
8 LESS: Exempted CCP leg of client-cleared transactions.				
9 Effective notional principal amount of sold credit protection.				
10 LESS: Effective notional principal amount offsets and PFE adjustments for sold credit protection.				
11 Total derivative exposures (sum of lines 4 to 10).				
Repo-style transactions				
12 On-balance sheet assets for repo-style transactions, except include the gross value of receivables for reverse repurchase transactions. Exclude from this item the value of securities received in a security-for-security repo-style transaction where the securities lender has not sold or re-hypothecated the securities received. Include in this item the value of securities sold under a repo-style arrangement.				
13 LESS: Reduction of the gross value of receivables in reverse repurchase transactions by cash payables in repurchase transactions under netting agreements.				
14 Counterparty credit risk for all repo-style transactions.				

TABLE 13 TO § 324.173 SUPPLEMENTARY LEVERAGE RATIO—Continued

	Dollar amounts in thousands			
	Tril	Bil	Mil	Thou
15 Exposure for repo-style transactions where a banking organization acts as an agent. 16 Total exposures for repo-style transactions (sum of lines 12 to 15).				
Other off-balance sheet exposures				
17 Off-balance sheet exposures at gross notional amounts. 18 LESS: Adjustments for conversion to credit equivalent amounts. 19 Off-balance sheet exposures (sum of lines 17 and 18).				
Capital and total leverage exposure				
20 Tier 1 capital. 21 Total leverage exposure (sum of lines 3, 11, 16 and 19).				
Supplementary leverage ratio				
22 Supplementary leverage ratio	(in percent)			

Dated: April 8, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By Order of the Board of Governors of the Federal Reserve System, April 10, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 8th day of April, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–09357 Filed 4–30–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2014–0012]

RIN 1557–AD83

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R–1488; Regulation Q]

RIN 7100 AE17

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE13

Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule, Proposed Revisions to the Definition of Eligible Guarantee

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are seeking comment on a notice of proposed rulemaking (proposed rule) that would revise the definition of eligible guarantee as incorporated into the agencies' advanced approaches risk-based capital rule, adopted in the agencies' July 2013 regulatory capital rule (2013 capital rule).

The agencies inadvertently limited the recognition of guarantees of wholesale exposures under the advanced approaches risk-based capital rule as incorporated into subpart E of the 2013 capital rule (advanced approaches). To address this matter, the proposed rule would remove the requirement that an eligible guarantee be made by an eligible guarantor for purposes of calculating the risk-weighted assets of an exposure (other than a securitization exposure) under the advanced approaches. The proposed change to the definition of eligible guarantee would apply to all banks, savings associations, bank holding companies, and savings and loan holding companies that are subject to the advanced approaches.

DATES: Comments must be received no later than June 13, 2014.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rules: Regulatory Capital, Proposed Revisions to the Definition of Eligible Guarantee'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov*. Enter ''Docket ID OCC–2014–0012'' in the Search Box and click ''Search''. Results can be filtered

using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.

• Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

• *Email: regs.comments@occ.treas.gov.*

• *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2014–0012'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

• *Viewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0012'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen.

• Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

• *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

• *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1488, RIN 7100 AE17, by any of the following methods:

• *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Robert de V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street NW., Washington, DC 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE13, by any of the following methods:

Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow instructions for submitting comments on the Agency Web site.

• *Email: Comments@fdic.gov.* Include the RIN 3064–AE13 on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN 3064–AE13 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Senior Risk Expert, (202) 649–6982; or Roger Tufts, Senior Economic Advisor, (202) 649–6981, Capital Policy; or Carl Kaminski, Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Anna Lee Hewko, Deputy Associate Director, (202) 530–6260; Constance M. Horsley, Assistant Director, (202) 452–5239; Thomas Boemio, Manager, (202) 452–2982; Andrew Willis, Senior Financial Analyst, (202) 912–4323; or Justyna Milewski, Financial Analyst, (202) 452–3607, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin McDonough, Senior Counsel, (202) 452–2036; April C. Snyder, Senior Counsel, (202) 452–3099; Christine Graham, Counsel, 202 452 3005; or Mark Buresh, Attorney, (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Ryan Billingsley, Chief, Capital Policy Section, *rbillingsley@fdic.gov;* Benedetto Bosco, Capital Markets Policy Analyst, *bbosco@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, *regulatorycapital@fdic.gov* or (202) 898–6888; or Mark Handzlik, Counsel, *mhandzlik@fdic.gov;* Michael Phillips, Counsel, *mphillips@fdic.gov;* or Rachel Ackmann, Attorney, rackmann@fdic.gov; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule

In 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) comprehensively revised and strengthened the capital regulations

applicable to banking organizations (2013 capital rule).[1] Among other changes, the 2013 capital rule revised the methodologies for calculating risk-weighted assets, including aspects of the standardized approach for calculating risk-weighted assets established by the Basel Committee on Banking Supervision (BCBS) through its international framework for regulatory capital in subpart D of the 2013 capital rule (standardized approach). The agencies amended the advanced approaches risk-based capital rule consistent with agreements reached by the BCBS, and incorporated the advanced approaches rule into subpart E of the 2013 capital rule (advanced approaches).[2]

The agencies' 2013 capital rule included a definition of eligible guarantee for purposes of both the standardized approach and the advanced approaches and introduced the definition of ''eligible guarantor.'' The definition included the requirement that an eligible guarantee be provided by an eligible guarantor. An eligible guarantor under the 2013 capital rule is a sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation (Farmer Mac), a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty. It may also be an entity (other than a special purpose entity) that at the time the guarantee is issued or anytime thereafter, has issued and has outstanding an unsecured debt security that is investment grade; whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and that is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

The agencies received comments following the release of the 2013 capital rule indicating that the revisions made to the definition of eligible guarantee changed the recognition of these guarantees for certain exposures under the advanced approaches wholesale framework. For example, several advanced approaches banking organizations noted that middle market and commercial real estate loans often involve guarantors that do not meet the definition of eligible guarantor. The guarantors are often related parties such as owners or sponsors that have not issued investment grade debt securities; nevertheless, advanced approaches banking organizations assert that such guarantees provide valuable credit risk mitigation that should be recognized under the advanced approaches. The agencies agree that the revisions to the 2013 capital rule inadvertently limited the recognition of guarantees of wholesale exposures under the advanced approaches and that these guarantees should continue to qualify as credit risk mitigants for purposes of the advanced approaches because they provide credit enhancement. Therefore the agencies propose to effectively revert to the previous treatment of eligible guarantees under the 2007 advanced approaches final rule for such exposures.[3]

The proposed rule would modify the definition of eligible guarantee for purposes of the advanced approaches by removing the requirement that an eligible guarantee be provided by an eligible guarantor for exposures that are not securitizations. The agencies would retain the definition of eligible guarantee in the 2013 capital rule for purposes of calculating risk-weighted assets under the standardized approach because the standardized approach generally assigns a single risk weight to exposures to most corporate borrowers and guarantors and does not incorporate the definition of eligible guarantee into a risk-sensitive methodology like the advanced approaches.

An eligible guarantee for purposes of the advanced approaches would need to be in writing and also be either an unconditional guarantee or a contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements). The guarantee would also have to cover all or a pro rata portion of all contractual payments of the obligated party on the reference exposure and give the beneficiary a direct claim against the protection provider. Additionally, the guarantee would not be unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary and would have to be legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced (except for a guarantee by a sovereign). The guarantee would require the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment and must not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure. Furthermore, the guarantee would not be provided by an affiliate of the banking organization, unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that does not control the banking organization and is subject to consolidated supervision and regulation comparable to that imposed on depository institutions, U.S. securities broker-dealers, or U.S. insurance companies (as the case may be) and for purposes of sections __.141 to __.145 and of the standardized approach, the guarantee would have to be provided by an eligible guarantor.

II. Regulatory Analyses

A. Paperwork Reduction Act (PRA)

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposed rule and determined that the rule does not introduce any new collection of information pursuant to the PRA.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory Flexibility Act analysis describing the impact of the

[1] 78 FR 55340 (September 10, 2013) (FDIC) and 78 FR 62018 (October 11, 2013) (OCC and Board). On April 8, 2014, the FDIC adopted as final the 2013 revised capital rule, with no substantive changes.

[2] *See* BCBS, ''Basel II: International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (November 2005 and revised in June 2006), available at *http://www.bis.org/publ/bcbs128.pdf. See* BCBS, ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (December 2010 and revised in June 2011), available at *http://www.bis.org/publ/bcbs189.htm.* The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. More information regarding the BCBS and its membership is available at *http://www.bis.org/bcbs/about.htm.* Documents issued by the BCBS are available through the Bank for International Settlements Web site at *http://www.bis.org.*

[3] 72 FR 69288 (December 7, 2007).

rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $500 million or less) or to certify that the rule will not have a significant economic impact on a substantial number of small entities.

Using the SBA's size standards, as of December 31, 2013, the OCC supervised 1,195 small entities.[4]

As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, the proposed rule would apply only to advanced approaches banking organizations. *Advanced approaches banking organization* is defined to include a national bank or Federal savings associations that has, or is a subsidiary of a bank holding company or savings and loan holding company that has, total consolidated assets of $250 billion or more, total consolidated on-balance sheet foreign exposure of $10 billion or more, or that has elected to use the advanced approaches. After considering the SBA's size standards and General Principals of Affiliation to identify small entities, the OCC determined that no small national banks or Federal savings associations are advanced approaches banking organizations. Because the proposed rule applies only to advanced approaches banking organizations, it does not impact any OCC-supervised small entities. Therefore, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed above, this proposed rule would amend the definition of ''eligible guarantee'' in section 2 of Regulation Q (12 CFR part 217) for the purposes of calculating risk-weighted assets under the advanced approaches in Regulation Q (12 CFR part 217, subpart E).

Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $500 million or less (a small banking organization).[5] As of December 31, 2013, there were approximately 627 small state member banks. As of December 31, 2013, there were approximately 3,676 small bank holding companies and approximately 268 small savings and loan holding companies.[6]

The proposed rule would apply only to advanced approaches banking organizations, which, generally, are banking organizations with total consolidated assets of $250 billion or more, that have total consolidated on-balance sheet foreign exposure of $10 billion or more, are a subsidiary of an advanced approaches depository institution, or that elect to use the advanced approaches. Currently, no small top-tier bank holding company, top-tier savings and loan holding company, or state member bank is an advanced approaches banking organization, so there would be no additional projected compliance requirements imposed on small bank holding companies, savings and loan holding companies, or state member banks. The Board expects that any small bank holding companies, savings and loan holding companies, or state member banks that would be covered by this proposed rule would rely on their parent banking organization for compliance and would not bear additional costs.

The Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

FDIC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a notice of proposed rulemaking, to prepare an Initial Regulatory Flexibility Act analysis describing the impact of the proposed rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $500 million or less) or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Using the SBA's size standards, as of December 31, 2013, the FDIC supervised 1,195 small entities. As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, however, the proposed rule would apply only to advanced approaches banking organizations. *Advanced approaches banking organization* is defined to include a state nonmember bank or a State savings association that has, or is a subsidiary of a bank holding company or savings and loan holding company that has, total consolidated assets of $250 billion or more, total consolidated on-balance sheet foreign exposure of $10 billion or more, or that has elected to use the advanced approaches. As of December 31, 2013, based on a $500 million threshold, 1 (out of 3,394) small state nonmember banks and no (out of 303) small state savings associations were under the advanced approaches. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). As detailed in the **SUPPLEMENTARY INFORMATION** section, the proposed rule would revise the definition of eligible guarantee as incorporated into the OCC's advanced approaches risk-based capital rule. In 2013, when the Federal banking agencies revised their respective risk-based capital requirements, they added a requirement that an eligible guarantee be from an eligible guarantor. This proposed rule would remove that requirement for the purposes of calculating the risk-

[4] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $500 million and $35.5 million, respectively. 78 FR 37409 (June 20, 2013). Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity. The OCC used December 31, 2013, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[5] *See* 13 CFR 121.201. Effective July 22, 2013, the Small Business Administration revised the size standards for banking organizations to $500 million in assets from $175 million in assets. 78 FR 37409 (June 20, 2013).

[6] Under the prior Small Business Administration threshold of $175 million in assets, as of March 31, 2013 the Board supervised approximately 369 small state member banks. As of December 31, 2012, there were approximately 2,259 small bank holding companies.

weighted asset amount for an exposure (other than for a securitization exposure) under the OCC's advanced approaches risk-based capital rule. For example, the OCC understands that advanced approaches banking organizations commonly obtain guarantees from guarantors that do not qualify as eligible guarantors for exposures in their commercial real estate and other wholesale portfolios. Under this proposed rule, these guarantees would continue to qualify as credit risk mitigants for purposes of the wholesale framework in the advanced approaches risk-based capital rule.

This proposed rule would not increase the minimum capital requirements for any institutions subject to the OCC's risk-based capital rules. After comparing existing capital levels with the proposed requirements, and considering the burden and other compliance costs associated with the proposed changes, the OCC has determined that its proposed rule will not result in expenditures by State, local, and Tribal governments, or by the private sector, of $100 million or more (adjusted annually for inflation). Accordingly, the OCC is not including a written statement to accompany this proposed rule.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 93a, 1462, 1462a, 1463, 1464, 3907, 3909, 1831o, and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 3 of chapter I of title 12, Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. In § 3.2, revise the definition of ''eligible guarantee'' to read as follows:

§ 3.2 Definitions.

* * * * *

Eligible guarantee means a guarantee that:

(1) Is written;

(2) Is either:

(i) Unconditional, or

(ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure;

(9) Is not provided by an affiliate of the national bank or Federal savings association, unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that:

(i) Does not control the national bank or Federal savings association; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on depository institutions, U.S. securities broker-dealers, or U.S. insurance companies (as the case may be); and

(10) For purposes of §§ 3.141 to 3.145 and of subpart D of this part, is provided by an eligible guarantor.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

■ 3. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 4. The heading of part 217 is revised to read as set forth above.

■ 5. In § 217.2, revise the definition of ''eligible guarantee'' to read as follows:

§ 217.2 Definitions.

* * * * *

Eligible guarantee means a guarantee that:

(1) Is written;

(2) Is either:

(i) Unconditional, or

(ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure;

(9) Is not provided by an affiliate of the Board-regulated institution, unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that:

(i) Does not control the Board-regulated institution; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on depository institutions, U.S. securities broker-dealers, or U.S. insurance companies (as the case may be); and

(10) For purposes of §§ 217.141 to 217.145 and for purposes of subpart D of this part, is provided by an eligible guarantor.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, part 324 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

■ 6. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 7. In § 324.2, revise the definition of ''eligible guarantee'' to read as follows:

§ 324.2 Definitions.

* * * * *

Eligible guarantee means a guarantee that:

(1) Is written;

(2) Is either:

(i) Unconditional, or

(ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure;

(9) Is not provided by an affiliate of the FDIC-supervised institution, unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that:

(i) Does not control the FDIC-supervised institution; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on depository institutions, U.S. securities broker-dealers, or U.S. insurance companies (as the case may be); and

(10) For purposes of §§ 324.141 to 324.145 and of subpart D of this part, is provided by an eligible guarantor.

* * * * *

Dated: April 8, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, April 11, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 8th day of April, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–09452 Filed 4–30–14; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE31

Chartering and Field of Membership Manual

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: The NCUA Board (Board) proposes to amend the associational common bond provisions of NCUA's chartering and field of membership rules. Specifically, the amendments establish a threshold requirement that an association not be formed primarily for the purpose of expanding credit union membership. The amendments also expand the criteria in the totality of the circumstances test, which is used to determine if an association, which satisfies the threshold requirement, also satisfies the associational common bond requirements and qualifies for inclusion in a federal credit union's (FCU) field of membership (FOM). The amendments will help to ensure FCU compliance with membership requirements. Additionally, NCUA proposes to grant automatic qualification under the associational common bond rules to certain categories of groups that NCUA has approved in the past after applying the totality of the circumstances test.

DATES: Comments must be received on or before June 30, 2014.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Notice of Proposed Rulemaking Regarding Associational Common Bond'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Chung, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–1178.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of the Proposed Rule
III. Regulatory Procedures

I. Background and Requirements of the Associational Common Bond

NCUA has implemented the Federal Credit Union Act's (FCU Act) FOM requirements [1] in its Chartering and Field of Membership Manual (Chartering Manual), incorporated as Appendix B to part 701 of NCUA's regulations.[2] NCUA also publishes this manual as an Interpretative Ruling and Policy Statement (IRPS). The current version of the manual is published as IRPS 08–2, as amended by IRPS 10–1.

Section 109 of the FCU Act provides for three types of FCU charters: (1) Single common bond (occupational or associational); (2) multiple common bond (multiple groups); and (3) community.[3] Section 109 also describes the membership criteria for each of these three types of charters.[4] Special rules apply to each type of charter.

An FOM consists of those persons and entities eligible for membership for each type of charter. The Chartering Manual sets forth that a single common bond FCU consists of one group having a common bond of occupation or association.[5] A multiple common bond FCU consists of more than one group, each of which has a common bond of occupation or association.[6] This rule will not affect the current requirements for occupational common bonds.

Associational Common Bond

A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.[7] Separately chartered associational groups can establish a single common bond relationship if such groups are integrally related and share common goals and purposes.[8] The Chartering Manual more specifically lists the individuals and groups eligible for membership in a single associational credit union. Eligible individuals and groups are natural and non-natural person members of the association, employees of the association, and the association itself.[9]

NCUA determines whether a group satisfies the associational common bond requirements for an FCU charter based on the totality of the circumstances.[10] This test in the current rule consists of seven factors: [11]

(1) Whether members pay dues;

(2) Whether members participate in the furtherance of the goals of the association;

(3) Whether the members have voting rights; [12]

(4) Whether the association maintains a membership list;

(5) Whether the association sponsors other activities;

(6) The association's membership eligibility requirements; and

(7) The frequency of meetings.

The Chartering Manual specifies certain examples that may or may not qualify as associational common bonds. Educational groups, church groups, student groups, homeowner associations, and consumer groups may qualify as associational common bonds.[13] However, associations based primarily on a client-customer relationship do not meet associational common bond requirements.[14]

Multiple Occupational or Associational Common Bonds

An FCU may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds.[15] This type of credit union is called a multiple common bond credit union. Each group in the FOM must have its own occupational or associational common bond. These groups must be within reasonable geographic proximity of the credit union.[16] The groups must be within the service area of one of the credit union's service facilities and are referred to as select groups. A select group as a whole will be considered to be within a credit union's service area when a majority of the persons in the select group live, work, or gather regularly within the service area; the group's headquarters is located within the service area; or the group's ''paid from'' or ''supervised from'' location is within the service area.

II. Summary of the Proposed Rule

Why is NCUA proposing this rule?

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing rules to make their programs more effective and less burdensome. The amendments to the associational

[1] 12 U.S.C. 1759.

[2] 12 CFR part 701, Appendix B.

[3] 12 U.S.C. 1759(b).

[4] *Id.*

[5] 12 CFR part 701, Appendix B (Chapter 2, Section II.A.1). A community FCU consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

[6] *Id.*

[7] 12 CFR part 701, Appendix B (Chapter 2, Section III.A.1).

[8] *Id.*

[9] *Id.*

[10] 12 CFR part 701, Appendix B (Chapter 2, Section III.A.1).

[11] *Id.*

[12] To meet this requirement, members do not have to vote directly for an officer, but may vote for a delegate who in turn represents the members' interests.

[13] 12 CFR part 701, Appendix B (Chapter 2, Section III.A.1).

[14] *Id.*

[15] 12 CFR part 701, Appendix B (Chapter 4, Section IV.A.1.).

[16] A multiple common bond credit union cannot include a trade, industry, or profession single occupational common bond or expand using single common bond criteria.

common bond requirements establish a threshold requirement that an association not be formed primarily for the purpose of expanding credit union membership. The amendments also improve and clarify the totality of the circumstances test so that FCUs will better understand it, and will provide regulatory relief for FCUs who want to add to their FOMs certain groups that qualify for automatic approval.

Also, NCUA is concerned that the current totality of the circumstances test may not be sufficiently filtering out those groups that do not meet the associational common bond requirements. In this regard, the amendments also emphasize that the group added to an FCU's FOM must meet the underlying common bond criteria. As noted above, FCUs must follow the associational requirements under the FCU Act and NCUA's regulations. In an attempt to expand their potential FOMs beyond appropriate limits, however, a few FCUs have begun forming their own associations and adding independent associations to their FOMs that may not fully satisfy the intent of the associational common bond rules. This is discussed more fully below.

Automatic Approval

NCUA has historically approved certain associations almost without exception due to their structure, practices, and functions, and because they easily satisfy the Chartering Manual's requirements. For example, churches are consistently recognized as valid associations based on the associational common bond requirements. Likewise, labor unions, scouting groups, electric cooperatives, and homeowner associations are regularly approved for inclusion due to their natural cooperative structures. By the nature of these groups, members consistently participate in activities developing common loyalties, mutual benefits, and mutual interests to further the goals and purposes of the association. Therefore, religious organizations including churches, homeowner associations, scouting groups, electric cooperatives, and labor unions will be automatically included in an FCU's FOM if it chooses to add the groups, as long as such groups meet service area and other related requirements. Additionally, NCUA proposes to automatically approve associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin for the same reasons stated above. However, it should be noted that only regular members of these groups will be approved. NCUA will not automatically approve honorary or other classes of non-regular members.

Based on NCUA's experience, alumni associations are also regularly approved for inclusion in FOMs. Consequently, the proposed rule allows alumni associations to be automatically approved. Members of the alumni association need not have attended the college or university if the association's bylaws permit them to join.

The automatic approval of the above associations provides regulatory relief for FCUs as they will no longer be required to obtain and review the association's bylaws, and, for the same reason, will result in more efficient use of NCUA's resources. Further, NCUA is requesting public comment on if NCUA should automatically approve any other categories of associations that are not included above.

NCUA has not deleted the descriptions and examples of associational common bonds in the Chartering Manual, and has now categorized such descriptions and examples as additional information. NCUA has also clarified that health clubs do not qualify under the associational common bond, including YMCAs, because these health clubs function primarily on a client-customer relationship. An FCU should consider this additional information regarding whether a group qualifies as having an associational common bond.

Associational Group Quality Assurance Review

In order to prevent abuses of the membership system, NCUA is currently reviewing the way associational groups are formed and operated. Prior to the issuance of IRPS 99–1, NCUA chartering policy specifically stated that associations formed primarily to obtain an FCU charter do not have a sufficient associational common bond. Since IRPS 99–1, NCUA chartering policy states that the common bond for an associational group cannot be established simply on the basis that the association exists. NCUA is now finding a few FCUs are forming associations for the primary purpose of facilitating credit union membership. NCUA has found that some of these associational groups do not comply with their own bylaws or their bylaws do not reflect current practices.

Prior to IRPS 99–1, NCUA chartering policy specifically stated that all associational common bonds must include a definition of the group that may be served based on the effective date of the association's charter, bylaws, and a geographic limitation. Since IRPS 99–1, NCUA chartering policy has not included a geographic limitation. Without the geographic limitation, NCUA is finding that associational groups, in conjunction with or at an FCU's instigation, are adding members outside of the FCU's historical operating area to increase FCU membership. This practice does not comply with the limitations in the Chartering Manual. Other associations have changed significantly since they were added to an FCU's FOM, and no longer meet the criteria for the totality of the circumstances test they once met. NCUA is currently reviewing several associations. If any of these associations no longer meet the totality of the circumstances test or an association is not operating according to their official bylaws in a way that impermissibly affects credit union membership, NCUA will remove the association from the FCU's FOM.

Threshold Requirement Regarding the Purpose for Which an Association Is Formed

As a threshold matter, when reviewing an application to include an association in an FCU's FOM, NCUA will determine if the association has been formed primarily for the purpose of expanding credit union membership. If NCUA makes such a determination, then the analysis ends and the association is denied inclusion in the FCU's FOM. If NCUA determines that the association was formed to serve another separate function as an organization,[17] then NCUA will apply the totality of the circumstances test to determine if the association satisfies the associational common bond requirements.

Totality of the Circumstances

NCUA proposes to amend the criteria in the totality of the circumstances test for evaluating compliance with the associational common bond requirements. Clarifying and expanding the totality of the circumstances test will better ensure that all associations or groups (the terms ''association'' and ''group'' are used interchangeably) have the requisite associational bond. As part of the totality of the circumstances test, NCUA considers all criteria together, and the presence or absence of any one factor is not determinative of the membership eligibility of an association.

NCUA is expanding the totality of the circumstances test by adding an

[17] In furtherance of this requirement, the association must have been operating as an organization independent from the requesting FCU for at least one year prior to the request to add the group to the FCU's FOM.

additional criterion regarding corporate separateness. Specifically, as part of the revised analysis, NCUA will review if there is corporate separateness between the association and the FCU. The association and the FCU must operate in a way that demonstrates the separate corporate existence of each entity. NCUA will consider several factors in determining if corporate separateness exists between an association and an FCU. The presence or absence of any one factor is not determinative. The factors NCUA will consider are as follows:

- Their respective business transactions, accounts, and records are not intermingled;
- Each observes the formalities of its separate corporate procedures;
- Each is adequately financed as a separate entity in light of normal obligations reasonably foreseeable in a business of its size and character;
- Each is held out to the public as a separate enterprise; and
- The group maintains a separate physical location, which does not include a P.O. Box or other mail drop or on premises owned or leased by the FCU.

Qualified associations already within an FCU's FOM are grandfathered and will not be subject to the corporate separateness criterion.

While NCUA has added this additional criterion to the totality of the circumstances test, NCUA has not removed any of the current criteria in the current totality of the circumstances test. However, the Board clarifies that after examining an association's purpose as a threshold matter, NCUA's primary focus under the totality of the circumstances test will be on the following criteria: (1) Whether the association provides opportunities for members to participate in the furtherance of the goals of the association; [18] (2) whether the association maintains a membership list; (3) whether the association sponsors other activities; and (4) whether the association's membership eligibility requirements are authoritative.

As part of applying the totality of the circumstances test, NCUA will also consider whether an FCU enrolls a member into an association without the member's knowledge or consent. If an FCU enrolls members who do not knowingly and voluntarily join the association then this will reflect negatively on the association's qualification for FCU membership, as it appears that the members do not truly support the goals and mission of the association. An FCU may pay a member's associational dues if the member has given consent.

Grandfathering in Associations

NCUA will grandfather in existing members from all qualified associations currently part of an FCU's membership. NCUA will consider if there are any associations in an FCU's FOM that need to be removed because they no longer meet the totality of circumstances test on a case-by-case basis. If an association that is in an FCU's FOM undergoes significant changes that result in the group no longer meeting the totality of the circumstances test, the FCU should notify NCUA's Office of Consumer Protection, Division of Consumer Access, to determine whether the group should be removed from the FOM or if such non-compliance can be cured.

Does the proposed rule create any new burdens for FCUs?

NCUA does not believe that the proposed requirements pertaining to the associational common bond provisions will add a significant administrative burden for FCUs. NCUA expects that the proposed changes will simplify the process of evaluating the existence of a qualifying associational common bond. FCUs will no longer have to include supplemental documentation, such as bylaws, with requests to serve pre-approved associational groups.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[19] For purposes of this analysis, NCUA considers small credit unions to be those having under $50 million in assets.[20] This rule would affect relatively few FCUs and the associated cost is minimal. Accordingly, NCUA certifies the rule will not have a significant economic impact on small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[21] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This proposed rule primarily requires the same information previously required and changes none of the forms listed in the Chartering Manual. Therefore, this proposed rule will not create new paperwork burdens or modify any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[22]

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 24, 2014.

Gerard S. Poliquin,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 701, Appendix B as follows:

[18] With respect to this criterion, the current totality of the circumstances test reads ''whether members participate in the furtherance of the goals of the association.'' The revised criterion reads somewhat differently in that it clarifies that the criterion is satisfied if the association provides members with opportunities to participate in the furtherance of the goals of the association even if a member does not necessarily choose to participate. This change in language is simply a clarification.

[19] 5 U.S.C. 603(a).

[20] Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003), as amended by Interpretative Ruling and Policy Statement 13–1, 78 FR 4032 (Jan. 18, 2013).

[21] 44 U.S.C. 3507(d); 5 CFR part 1320.

[22] Public Law 105–277, 112 Stat. 2681 (1998).

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Section III.A.1. of Chapter 2 of appendix B to part 701 is revised to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition and can operate nationally. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the association's charter, bylaws, and any other equivalent documentation.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of NCUA, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—e.g., ''Sprocket Association''—and will be shown in the last clause of the field of membership.

III.A.1.a—Threshold Requirement Regarding the Purpose for Which an Associational Group Is Formed and the Totality of the Circumstances Criteria

As a threshold matter, when reviewing an application to include an association in a federal credit union's field of membership, NCUA will determine if the association has been formed primarily for the purpose of expanding credit union membership. If NCUA makes such a determination, then the analysis ends and the association is denied inclusion in the federal credit union's field of membership. If NCUA determines that the association was formed to serve some other separate function as an organization, then NCUA will apply the following totality of the circumstances test to determine if the association satisfies the associational common bond requirements. The totality of the circumstances test consists of the following factors:

1. Whether the association provides opportunities for members to participate in the furtherance of the goals of the association;
2. Whether the association maintains a membership list;
3. Whether the association sponsors other activities;
4. Whether the association's membership eligibility requirements are authoritative;
5. Whether members pay dues;
6. Whether the members have voting rights; To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
7. The frequency of meetings; and
8. Separateness—NCUA reviews if there is corporate separateness between the group and the federal credit union. The group and the federal credit union must operate in a way that demonstrates the separate corporate existence of each entity. NCUA will consider several factors in determining if corporate separateness exists between a group and a federal credit union. The presence or absence of any one factor is not determinative. The factors NCUA will consider are as follows:

- Their respective business transactions, accounts, and records are not intermingled;
- Each observes the formalities of its separate corporate procedures;
- Each is adequately financed as a separate entity in the light of normal obligations reasonably foreseeable in a business of its size and character;
- Each is held out to the public as a separate enterprise; and
- The group maintains a separate physical location, which does not include a P.O. Box or other mail drop or on premises owned or leased by the federal credit union.

NCUA considers all of the totality of the circumstances test factors together. No one factor alone is determinative of membership eligibility as an association. The totality of the circumstances controls over any individual factor in the test. However, NCUA's primary focus will be on factors 1–4.

III.A.1.b—Pre-Approved Groups

NCUA automatically approves the below groups as satisfying the associational common bond provisions. However, if NCUA finds that, for any reason, any such group does not satisfy the associational common bond provisions, then such group may be removed from the relevant federal credit union fields of membership, if appropriate. NCUA only approves regular members of an approved group. Honorary, affiliate, or non-regular members do not qualify.

These groups are:

(1) Alumni associations;
(2) Religious organizations, including churches or groups of related churches;
(3) Electric cooperatives;
(4) Homeowner associations;
(5) Labor unions;
(6) Scouting groups; and
(7) Associations that have a mission based on preserving or furthering the culture of a particular national or ethnic origin.

III.A.1.d—Additional Information

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Each class of member will be evaluated based on the totality of the circumstances. Individuals or honorary members who only make donations to the association are not eligible to join the credit union.

Educational groups—for example, parent-teacher organizations and student organizations in any school—may constitute associational common bonds.

Student groups (e.g., students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter.

Tenant groups, consumer groups, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. Health clubs are an example of a group not meeting associational common bond requirements, including YMCAs. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of

membership, may qualify as a valid associational common bond.

* * * * *

[FR Doc. 2014–09812 Filed 4–30–14; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0257; Directorate Identifier 2014–NM–012–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of fatigue cracking in certain areas. This proposed AD would require repetitive inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway; post-repair and post-modification inspections for certain airplanes; and related investigative and corrective actions, if necessary. This proposed AD would also provide optional terminating actions for certain repetitive inspections. We are proposing this AD to detect and correct fatigue cracking, which could result in rapid loss of cabin pressure.

DATES: We must receive comments on this proposed AD by June 16, 2014.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0257; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0257; Directorate Identifier 2014–NM–012–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

We received reports of fatigue cracking in the skin assembly and bear strap at the aft lower corner of the forward airstair stowage doorway. The cracking was caused by fatigue from cyclic pressurization loading. At the time of crack detection, the airplanes had accumulated between 16,177 and 74,036 total flight cycles. This condition, if not corrected, could result in rapid loss of cabin pressure.

Related Rulemaking

AD 90–06–02, Amendment 39–6489 (Docket No. 89–NM–67–AD; 55 FR 8372, March 7, 1990), mandates certain structural modifications for Model 737–100, –200, –200C series airplanes. AD 98–11–04 R1, Amendment 39–10984 (64 FR 987, January 7, 1999); AD 2008–08–23, Amendment 39–15477 (73 FR 21237, April 21, 2008); and AD 2008–09–13, Amendment 39–15494 (73 FR 24164, May 2, 2008); are supplemental structural inspection (SSI) program ADs that contain inspection requirements that are near or overlap the inspection areas that this proposed AD would require. The modification mandated by AD 90–06–02 and the inspections mandated by the exploratory SSI program ADs are not sufficient to address the unsafe condition identified in this proposed AD.

Relevant Service Information

We reviewed Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0257.

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 accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' This proposed AD would also provide optional terminating actions for certain repetitive inspections.

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective

actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 132 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

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

We have received no definitive data that would enable us to provide cost estimates for any on-condition actions specified in this proposed AD. We have no way of determining the number of aircraft that might need this repair.

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):

The Boeing Company: Docket No. FAA–2014–0257; Directorate Identifier 2014–NM–012–AD.

(a) Comments Due Date

We must receive comments by June 16, 2014.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

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

(e) Unsafe Condition

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

(f) Compliance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Inspections and Corrective Actions for Group 6 Airplanes

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

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

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

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

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

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

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

(m) Optional Terminating Actions

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

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

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

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

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

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

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

(n) Credit for Previous Actions

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

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

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

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

(o) Exceptions to the Service Information

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

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

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

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

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

(q) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (r)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(r) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 25, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–09941 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 120

[Docket No. FAA–2012–1058; Notice No. 14–02]

RIN 2120–AK09

Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM); Extension of comment period.

SUMMARY: This action extends the comment period for an Advance Notice of Proposed Rulemaking (ANPRM) that was published on March 17, 2014. In that document, the FAA sought input on its intent to amend the FAA's drug and alcohol testing regulations to require drug and alcohol testing of certain maintenance personnel outside of the United States. Airlines for America (A4A), the International Air Transport Association (IATA), and Deutsche Lufthansa AG (Lufthansa) have requested that the FAA extend the comment period closing date to allow time for commenters to adequately analyze the ANPRM and prepare comments.

DATES: The comment period for the ANPRM published on March 17, 2014 (79 FR 14621), was scheduled to close on May 16, 2014, and is extended until July 17, 2014.

ADDRESSES: You may send comments identified by docket FAA–2012–1058 using any of the following methods:

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

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or visit Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Valentine Castaneda, ARM–104, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9677; email *val.castaneda@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on the ANPRM and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On March 17, 2014, the FAA issued Notice No. 14–02, entitled ''Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States'' (79 FR 14621). Comments to that document were to be received on or before May 16, 2014. By letter dated March 26, 2014, A4A

requested that the FAA extend the comment period for Notice No. 14–02 for 120 days. By letters dated April 8, 2014 and April 9, 2014, respectively, IATA and Lufthansa also requested a 120-day extension of the comment period. The petitioners requested the extension to secure additional time for commenters to assess the impact of the ANPRM and prepare comments.

While the FAA concurs with the petitioners' requests for an extension of the comment period, it does not support a 120-day extension. The FAA finds that providing an additional 60 days is sufficient for these petitioners and other commenters to analyze the ANPRM and provide meaningful comments.

Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by A4A, IATA, and Lufthansa for extension of the comment period to Notice No. 14–02. These petitioners have shown a substantive interest in the ANPRM and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 14–02 is extended until July 17, 2014.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the ANPRM, explain the reason for any recommendations, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this ANPRM. Before acting on this ANPRM, the FAA will consider all comments it receives on or before the extended closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay.

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

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

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

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

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

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

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

All documents the FAA considered in developing the ANPRM, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued at Washington, DC, under the authority set forth in 49 U.S.C. 44733 on April 28, 2014.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2014–09969 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 398

[Docket No.: DOT–OST–2014–0061]

Essential Air Service Proposed Enforcement Policy

AGENCY: Office of Aviation Analysis (X50), Department of Transportation (DOT).

ACTION: Notice of Proposed Enforcement Policy.

SUMMARY: This proposed notice of enforcement policy announces how the Department of Transportation (DOT) intends, going forward, to enforce compliance with the requirements of the Department of Transportation and Related Agencies Appropriations Act, 2000, which prohibits the Department from subsidizing Essential Air Service (EAS) to communities located within the 48 contiguous States receiving per passenger subsidy amounts exceeding $200, unless the communities are located more than 210 miles from the nearest large or medium hub airport. As proposed, all communities receiving subsidies under the EAS Program would have until September 30, 2015, based on data from October 1, 2014, through September 30, 2015, to ensure compliance with the $200 subsidy cap or face termination of subsidy eligibility. After September 30, 2015, the Department would continue enforcement of the $200 subsidy cap on an annual basis based on data compiled at the end of every fiscal year. Consistent with established procedures, DOT will issue each potentially impacted community a show cause order regarding termination of eligibility and provide each such community with a fair and reasonable opportunity to demonstrate compliance with the $200 subsidy cap prior to a final decision by DOT. In addition, any community that is deemed ineligible under the $200 subsidy cap provision may petition the Secretary for a waiver. After receiving a community's petition for a waiver, the Secretary may waive the subsidy cap for a limited period of time, on a case-by-case basis, and subject to availability of funds. To provide the Department with sufficient time to evaluate the FY 2015 data for potentially affected communities, DOT does not intend to begin the Show Cause Order process until January 2016.

DATES: Send comments on or before June 30, 2014. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Send comments identified by docket number DOT–OST–2014–

0061 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* DOT will read and respond to all substantive comments. If you are filing comments on behalf of an organization or group of individuals, we encourage you to include the name of your group or organization. However, anonymous comments will be considered if they are timely filed. Including your name/group along with your comment is completely optional.

Docket: Comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Kevin Schlemmer, Chief, Essential Air Service and Domestic Analysis Division, Office of Aviation Analysis, Department of Transportation, 1200 New Jersey Avenue SE, Room W86–309, Washington, DC 20590; telephone: (202) 366–3176; *Kevin.Schlemmer@dot.gov.* For legal questions concerning this action, contact Claire McKenna, Attorney, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE., Room 96–309; telephone: (202) 366–0365; email: *Claire.McKenna@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Airline Deregulation Act, passed in 1978, gave airlines almost total freedom to determine which markets to serve domestically and what fares to charge for that service. The United States Congress (Congress) established the EAS program to guarantee that small communities that were served by certificated air carriers before deregulation maintain at least a minimal level of scheduled air service. Since its inception, the EAS program has provided a vital link for eligible small communities to the National Airspace System (NAS). Indeed, this program ensures that small communities across America can tap into the economic and quality of life benefits that scheduled air services offer.

Over the years, Congress has made a number of statutory changes to the program (most recently in 2011 and 2012), but the fundamental purpose of the program remains unchanged. Given the socio-economic importance of this program, DOT remains committed to preserving the EAS program for eligible communities and ensuring the sustainability of the program for the future.

This proposed enforcement policy concerns the statutory mandate that prohibits DOT from providing EAS funds to any community in the 48 contiguous states that requires a per-passenger-subsidy in excess of $200 unless the community is located more than 210 miles from the nearest large or medium airport. Congress first imposed a $200 subsidy per passenger cap for communities in the 48 contiguous States in FY 1990 appropriations language. Such language was repeated in several later appropriations acts, throughout the 1990s, and was made permanent by the Department of Transportation and Related Agencies Appropriations Act, 2000, Public Law 106–69, 113 Stat. 986 (Oct. 9, 1999). Specifically, the Act provided that:

> Hereafter, notwithstanding 49 U.S.C. 41742, no essential air service subsidies shall be provided to communities in the 48 contiguous States that are located fewer than 70 highway miles from the nearest large or medium hub airport, or that require a rate of subsidy per passenger in excess of $200 unless such point is greater than 210 miles from the nearest large or medium hub airport.

The Department always has expected communities less than 210 miles from the nearest large or medium hub airport to work together with air carriers providing EAS to keep the subsidy per passenger below the $200 cap or risk termination of eligibility from the EAS Program. DOT also has routinely provided notice of this statutory mandate to communities that were or appeared to be at risk of exceeding the cap, and a number of EAS communities have lost their eligibility as a result of the cap.

Although the $200 subsidy cap is a longstanding statutory provision, in 2012, Congress added a provision that allows the Secretary to grant waivers in limited circumstances. To effectuate that new provision and to ensure the fair and consistent treatment of all EAS communities subject to the $200 subsidy cap prospectively, DOT is issuing this proposed enforcement policy. Specifically, the Department is considering a policy that will defer future enforcement of the $200 subsidy cap until January 2016. The proposed policy, if finalized, would set September 30, 2015, as the date by which any EAS community with a per passenger subsidy exceeding or approaching the $200 subsidy cap must ensure compliance with the cap. Under the proposed policy, DOT would determine each community's subsidy per passenger cap based on data compiled from October 1, 2014, through September 30, 2015. Consistent with past practice and our obligations under 49 U.S.C. 41733(f)(2), DOT would continue to encourage potentially affected communities to work with air carriers providing subsidized EAS to maximize use of the service awarded under their respective carrier-selection orders to avoid exceeding the $200 subsidy cap.

If after September 30, 2015, a particular community's subsidy per passenger remains above $200 and its location is less than 210 miles from the nearest large or medium hub airport, the Department would initiate proceedings, consistent with 49 U.S.C. 41733(f) and Public Law 112–97 (Feb. 14, 2012), Section 426(e), directing interested persons to show cause why the Department should not terminate the eligibility of the community in question under the EAS Program. This process will provide each potentially affected community with a fair and reasonable opportunity to demonstrate compliance with the $200 subsidy cap prior to a final decision by DOT. To provide the Department with sufficient time to receive and evaluate the FY 2015 data for potentially affected communities, DOT does not intend to begin the show cause process until January 2016.

After September 30, 2015, the Department would continue enforcement of the $200 subsidy cap on an annual basis based on data compiled at the end of every fiscal year and submitted to DOT after the close of the

most recent fiscal year. Regardless of whether this proposed enforcement policy is adopted in any form, the EAS program contains certain statutory protections that an adversely impacted EAS community may invoke. First, in the event that DOT determines that a community is ineligible because it exceeds the $200 subsidy cap provision in a given fiscal year, the community may petition the Secretary of DOT for a waiver pursuant to Pubic Law 112–97, Sec. 426(e) (c) (Feb. 14, 2012). Under this provision, ''[s]ubject to the availability of funds, the Secretary may waive, on a case-by-case basis, the subsidy-per-passenger cap.'' The law further provides: ''A waiver . . . shall remain in effect for a limited period of time, as determined by the Secretary.'' Second, a community that is deemed ineligible based on the $200 subsidy cap and removed from the program may petition the Secretary for reinstatement into the program in a subsequent year if the community can demonstrate that it will be able to comply with the $200 subsidy cap on an annual basis going forward.

The Department seeks comments from all interested parties regarding this proposed enforcement policy.

Issued in Washington, DC, on April 23, 2014.

Brandon M. Belford,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2014–09830 Filed 4–30–14; 8:45 am]

BILLING CODE 4910–9X–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2006–0140]

RIN 0960–AF35

Revised Medical Criteria for Evaluating Neurological Disorders; Reopening of the Comment Period

AGENCY: Social Security Administration.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: On February 25, 2014, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) regarding Revised Medical Criteria for Evaluating Neurological Disorders and solicited public comments. We provided a 60-day comment period ending on April 28, 2014. We are reopening the comment period for 30 days.

DATES: The comment period for the notice of proposed rulemaking published on February 25, 2014 (79 FR 10636), is reopened. To ensure that your written comments are considered, we must receive them no later than June 2, 2014.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2006–0140 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2006–0140. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: This document reopens to June 2, 2014, the comment period for the notice of proposed rulemaking that we published on February 25, 2014. We are reopening the comment period in light of the comments that we have received on the proposed rules. If you have already provided comments on the proposed rules, we will consider your comments and you do not need to resubmit them.

Dated: April 25, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2014–09951 Filed 4–30–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. FDA–2014–N–0297]

Reclassification of Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair and Surgical Instrumentation for Urogynecologic Surgical Mesh Procedures; Designation of Special Controls for Urogynecologic Surgical Mesh Instrumentation

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is proposing to reclassify surgical mesh for transvaginal pelvic organ prolapse (POP) repair from class II to class III. FDA is proposing this reclassification based on the tentative determination that general controls and special controls together are not sufficient to provide reasonable assurance of safety and effectiveness for this device. In addition, FDA is proposing to reclassify urogynecologic surgical mesh instrumentation from class I to class II. The Agency is also proposing to establish special controls for surgical instrumentation for use with urogynecologic surgical mesh. FDA is proposing this action, based on the tentative determination that general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of these devices, and there is sufficient information to establish special controls to provide such assurance. The Agency is reclassifying both the surgical mesh for transvaginal repair and the urogynecologic surgical mesh instrumentation on its own initiative based on new information.

DATES: Submit either electronic or written comments on this proposed order by July 30, 2014. Please see section XIII for the proposed effective date of any final order that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0297, 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:

• *Mail/Hand delivery/Courier (for paper 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–2014–N–0297 for this rulemaking. 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: Melissa Burns, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1646, Silver Spring, MD 20993, 301–796–5616, *melissa.burns@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act of 2004 (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) establishes three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Section 513(a)(1) of the FD&C Act defines three classes of devices. Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under sections 501, 502, 510, 516, 518, 519, or 520 of the FD&C Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), or any combination of such sections) are sufficient to provide reasonable assurance of safety and effectiveness; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of safety and effectiveness or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use that is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be regulated by general controls (section 513(a)(1)(A) of the FD&C Act). Class II devices are those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including the issuance of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the Agency deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act; see also § 860.3(c)(2) (21 CFR 860.3(c)(2))). Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide reasonable assurance of safety and effectiveness, and are purported or represented for a use in supporting or sustaining human life or for a use that is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

Section 513(e)(1) of the FD&C Act provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) or an interested person may petition FDA to reclassify a device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard,* supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F. Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in ''medical science'' (See *Upjohn* v. *Finch,* supra, 422 F.2d at 951.). Whether data before the Agency are past or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in § 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Mfrs. Assoc.* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986).) To be considered in the reclassification process, the ''valid scientific evidence'' upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA) (see section 520(c) of the FD&C Act).

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final reclassification order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification

panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to surgical mesh for transvaginal POP repair and, therefore, has met this requirement under section 513(e)(1) of the FD&C Act. As explained further in section VIII, a meeting of a device classification panel described in section 513(b) of the FD&C Act took place in 2011 to discuss whether surgical mesh for transvaginal POP repair should be reclassified to class III or remain in class II, and the panel recommended that the device be reclassified into class III because general controls and special controls would not be sufficient to provide a reasonable assurance of safety and effectiveness. FDA is not aware of new information since the 2011 panel that would provide a basis for a different recommendation or findings. The 2011 panel meeting did not include a specific discussion of surgical instrumentation for use with urogynecologic surgical mesh and hence FDA will convene a panel to discuss this issue prior to finalizing reclassification of instrumentation for this use.

Section 513(e)(1)(A)(i) of the FD&C Act requires that the proposed reclassification order set forth the proposed reclassification and a substantive summary of the valid scientific evidence concerning the proposed reclassification, including the public health benefits of the use of the device; the nature and if known, incidence of the risk of the device; and in the case of reclassification from class II to class III, why general controls and special controls together are not sufficient to provide reasonable assurance of safety and effectiveness for the device.

In accordance with section 513(e)(1), the Agency is proposing, based on new information that has come to the Agency's attention since the original classification of surgical mesh, to reclassify surgical mesh for transvaginal POP repair, based on the tentative determination that general controls and special controls are not sufficient to provide a reasonable assurance of safety and effectiveness. Also, the Agency is proposing, based on new information, to reclassify urogynecologic surgical mesh instrumentation from class I to class II, and as part of the proposed reclassification and consistent with section 513(a)(1)(B), is proposing to establish special controls for urogynecologic surgical mesh instrumentation. FDA tentatively determines that the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness of this instrumentation, and there is sufficient information to establish special controls to provide such assurance. FDA is proposing reclassification of both devices based on its review of information received through multiple sources. These sources include: (1) Postmarket surveillance of medical device reports (MDRs), (2) concerns raised by the clinical community and citizens, and (3) the published literature.

Section 515(b) of the FD&C Act (21 U.S.C. 360e) provides that for any class III preamendments device, FDA shall by order require such device to have approval of a PMA or notice of completion of a product development protocol (PDP). Elsewhere in this issue of the **Federal Register**, FDA is proposing to require the filing of a PMA or notice of completion of a PDP, which will only be finalized if FDA reclassifies surgical mesh for transvaginal POP repair to class III.

II. Regulatory History of the Devices

Surgical mesh is a preamendments device classified into class II (§ 878.3300 (21 CFR 878.3300)). Beginning in 1992, FDA cleared premarket notification (510(k)) submissions for surgical mesh indicated for POP repair under the general surgical mesh classification regulation, § 878.3300. FDA has cleared over 100 510(k) submissions for surgical meshes with a POP indication. Urogynecologic surgical mesh instrumentation is currently classified as a class I device under § 876.4730 (21 CFR 876.4730) (manual gastroenterology-urology surgical instrument and accessories) or § 878.4800 (manual surgical instrument for general use).

III. Device Description

Surgical mesh can be placed abdominally or transvaginally to repair POP. When placed transvaginally, surgical mesh can be placed in the anterior vaginal wall to aid in the correction of cystocele (anterior repair), in the posterior vaginal wall to aid in correction of rectocele (posterior repair), or attached to the vaginal wall and pelvic floor ligaments to correct uterine prolapse or vaginal apical prolapse (apical repair). These devices are made of synthetic material, non-synthetic material, or a combination of both. They are marketed as either stand-alone mesh products or mesh kits (i.e., the product includes mesh and instrumentation to aid insertion, placement, fixation, and/or anchoring).

This proposed order does not include surgical mesh indicated for surgical treatment of stress urinary incontinence, sacrocolpopexy (transabdominal POP repair), hernia repair, and other non-urogynecologic indications.

Many mesh products include instrumentation specifically designed to aid in insertion, placement, fixation, and anchoring of the mesh in the body. Instrumentation can also be provided separately from the mesh implant. This instrumentation is typically composed of a stainless-steel needle attached to a plastic handle and is similar to trocar needles used in general surgery. The needles used in mesh-augmented urogynecologic repair are designed to aid transvaginal or transabdominal insertion and placement of the mesh. Instrumentation for mesh-augmented POP repair can also be designed for a specific anatomical compartment.

IV. Proposed Reclassification

FDA is proposing that surgical mesh for transvaginal POP repair be reclassified from class II to class III. FDA is also proposing that urogynecologic surgical mesh instrumentation be reclassified from class I to class II with special controls. In accordance with sections 513(e)(1) of the FD&C Act, FDA, on its own initiative, is proposing to reclassify these devices based on new information.

V. Dates New Requirements Apply

FDA is proposing that any final order based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final order. If FDA finalizes this order, surgical mesh for transvaginal POP repair will be reclassified into class III and urogynecologic surgical mesh instrumentation will be reclassified into class II with special controls.

VI. Public Health Benefits and Risks to Health

As required by section 513(e)(1)(A)(I) of the FD&C Act, FDA is providing a substantive summary of the valid scientific evidence regarding the public health benefit of the use of surgical mesh for transvaginal POP repair and urogynecologic surgical mesh instrumentation, and the nature and, if known, incidence of the risk of the devices.

The devices have the potential to benefit the public health by aiding in the correction of cystocele (anterior repair), rectocele (posterior repair), uterine prolapse, and vaginal apical prolapse (apical repair).

FDA has evaluated the risks to health associated with the use of surgical mesh indicated for transvaginal POP repair and has identified the following risks for this device:

1. Perioperative risks. Organ perforation or injury and bleeding (including hemorrhage/hematoma).
2. Vaginal mesh exposure (mesh visualized through the vaginal epithelium, e.g., separated incision line) (Ref. 1). Clinical sequelae include pelvic pain, infection, de novo dyspareunia (painful sex for patient or partner), de novo vaginal bleeding, atypical vaginal discharge, and the need for additional corrective surgeries (possibly including mesh excision).
3. Mesh extrusion (passage of mesh into visceral organ, including the bladder or rectum) (Ref. 1). Clinical sequelae include pelvic pain, infection, de novo dyspareunia, fistula formation, and the need for additional corrective surgeries (possibly including suprapubic catheter, diverting colostomy).
4. Other risks that can occur without mesh exposure or extrusion include vaginal scarring, shrinkage, and tightening (possibly caused by mesh/tissue contraction); pelvic pain; infection (including pelvic abscess); de novo dyspareunia; de novo voiding dysfunction (e.g., incontinence); recurrent prolapse; and neuromuscular problems (including groin and leg pain).

FDA has also evaluated the risks to health associated with the use of urogynecologic surgical mesh instrumentation and has identified the following risks for this device:

1. Perioperative risks. Organ perforation or injury and bleeding (including hemorrhage/hematoma).
2. Damage to blood vessels, nerves, connective tissue, and other structures. This may be caused by improperly designed and/or misused surgical mesh instrumentation. Clinical sequelae include pelvic pain and neuromuscular problems.
3. Adverse tissue reaction. This may be caused by non-biocompatible materials.
4. Infection. This may be due to inadequate sterilization and/or reprocessing instructions or procedures.

As discussed further in this document, these findings regarding the public health benefits and risks to health associated with surgical mesh for transvaginal POP repair and urogynecologic surgical mesh instrumentation are based on publicly available information, including the published literature and MDRs, and are supported by the reports and recommendations of the Obstetrics and Gynecological Devices Panel (the Panel) from the meeting on September 8 and 9, 2011.

VII. Summary of the Data Upon Which the Reclassification Is Based

A. Safety of Surgical Mesh Used for Transvaginal Repair of Pelvic Organ Prolapse

In the published literature, mesh exposure (also referred to as erosion or extrusion in the published literature) is the most common and consistently reported mesh-related complication following transvaginal POP repair with mesh. In this document, we use the term ''mesh exposure'' to refer to mesh visualized through the vaginal epithelium, and we use the term ''mesh extrusion'' to refer to passage of mesh into a visceral organ, including into the bladder or rectum.

Mesh exposure can result in serious complications unique to mesh procedures and is not experienced by patients who undergo traditional repair. Mesh exposure may require mesh removal or excision to manage the sequelae (e.g., pelvic pain, infection (including pelvic abscess), and dyspareunia). This complication can be life altering for some women as mesh removal or excision may require multiple surgeries and sequelae may persist despite mesh removal (Ref. 2). Other clinical sequelae associated with mesh exposure include vaginal bleeding and vaginal discharge (Refs. 2 and 3).

Less common is mesh extrusion partly or through the bladder or rectal mucosa (Ref. 4). In addition to the clinical sequelae previously described, the former may require a suprapubic catheter (Ref. 4), and when the latter occurs ''a diverting colostomy may be needed to excise and repair the erosion site and lead[s] to life-long morbidity for the patient'' (Ref. 5).

A 2011 systematic review of the safety of transvaginal POP repair with mesh by Abed et al. cited a summary incidence of mesh exposure of 10.3 percent (95 percent CI, 9.7–10.9 percent; range 0–29.7 percent within 12 months of surgery from 110 studies including 11,785 women in whom mesh was used for transvaginal POP repair) (Ref. 3). The incidence of mesh exposure did not differ between nonabsorbable synthetic mesh (10.3 percent) and biologic graft material (10.1 percent) (Ref. 3).

For non-absorbable synthetic mesh exposures, 56 percent (448/795) of patients required surgical excision in the operating room with some women requiring two to three additional surgeries (Ref. 3). The one randomized controlled trial (RCT) with available long-term outcomes of anterior repair with nonabsorbable synthetic mesh found that 5 percent of patients had unresolved mesh exposure at 3 years of followup (Ref. 6).

Less information is available about management of exposure from biologic grafts. The review by Abed et al. found that, for the 35 women in which management of exposure from biologic grafts was discussed, half responded to local treatment with topical agents. For the remainder, management of the exposure was not discussed (Ref. 3).

Mesh/tissue contraction, causing vaginal scarring, shrinkage, tightening, and/or pain in association with transvaginal POP repair with mesh, is another mesh-specific adverse event that has been reported in the literature (Refs. 7 and 8). However, vaginal scarring, shrinkage, and tightening can also occur following traditional repair.

Other postoperative adverse events commonly reported in the literature that are associated with POP repair with mesh are pelvic pain, infection, de novo dyspareunia, de novo voiding dysfunction (e.g., incontinence), neuromuscular problems (including groin and leg pain), and additional corrective surgeries for complications or recurrent prolapse (Refs. 2, 7, 9, 10).

These adverse events are not unique to POP procedures with mesh, but repeat surgery for complications appears to be highest for transvaginal POP repair with mesh, followed by sacrocolpopexy and traditional repair (Refs. 11 and 12). A systematic review of re-surgery rates following POP repair found that transvaginal surgery with mesh is associated with a higher rate of complications requiring reoperation compared to sacrocolpopexy (abdominal POP repair with mesh) or traditional transvaginal repair (7.2 percent vs. 4.8 percent vs. 1.9 percent, respectively) (Ref. 11). (For transvaginal surgery with mesh, 24 studies including 3,425 women with mean followup of 17 months were included in this systematic review. For sacrocolpopexy, 52 studies including 5,639 women with mean followup of 26 months were included, and for traditional transvaginal repair, 48 studies including 7,827 women with mean followup of 32 months were included.) From the one RCT that directly compared sacrocolpopexy to transvaginal POP repair with mesh (both using synthetic nonabsorbable mesh), overall re-surgery within 2 years postoperative was significantly more common following transvaginal POP repair with mesh than laparoscopic sacrocolpopexy, with rates of 22 percent (12/55) and 5 percent (3/53), respectively (p=0.006) (Ref. 12). De novo

stress urinary incontinence has been reported to occur more frequently following anterior repair with mesh compared to traditional anterior repair (Ref. 13). Currently, there is no evidence in the literature that other postoperative adverse events occur more commonly following mesh repairs compared to non-mesh repairs.

The findings within the literature are consistent with the types and relative frequency of adverse events that have been reported to FDA through the Manufacturer and User Facility Device Experience (MAUDE) database. Between January 1, 2011, and December 31, 2013, FDA received 19,043 adverse events for surgical mesh used for POP repair. The most frequently reported adverse events were pain, erosion, and injury. Further discussion of the risks associated with surgical mesh for transvaginal POP repair is provided in FDA materials for the September 2011 panel meeting (Ref. 14).

B. Effectiveness of Surgical Mesh Used for Transvaginal Repair of Pelvic Organ Prolapse

The majority of trials evaluating effectiveness of POP repair use a primary effectiveness outcome of ideal anatomic support, defined as prolapse Stage 0 or 1 (i.e., the lowest point of prolapse is more than 1 cm proximal to the vaginal opening) on the Pelvic Organ Prolapse Quantification (POP–Q) scale. This outcome measure was chosen as a means to provide a quantitative description of the degree of prolapse, but it is not correlated with POP symptoms or patient assessment of improvement (Ref. 15). Additionally, assessment of prolapse stage suffers from interobserver variability (Ref. 16).

The published literature reveals that, although transvaginal POP repair with mesh often restores anatomy, it has not been shown to improve clinical benefit over traditional non-mesh repair and, given the risks associated with mesh, the probable benefits from use of the device do not outweigh the probable risks. This is particularly true for apical and posterior repair with mesh (Refs. 9, 10, 17–22).

A systematic review of transvaginal mesh kits for apical repair found that they appear effective in restoring apical prolapse in the short term, but long-term outcomes are unknown (Ref. 23). Additionally, there is no evidence that transvaginal apical repair with mesh is more effective than traditional transvaginal apical repair. Specifically, only two RCTs have evaluated apical repair with mesh compared to traditional transvaginal repair, and neither found a significant improvement in anatomic outcome with mesh augmentation (Refs. 17 and 18). Both of these RCTs evaluated synthetic nonabsorbable transvaginal mesh kits for multicompartment repair (i.e., anterior, posterior, or total (anterior and posterior) mesh placement). Of these two trials, Withagen et al. reported an anatomic benefit in the posterior compartment following posterior repair with mesh, but subjects in the trial who underwent posterior repair with mesh had less posterior prolapse at baseline than subjects who underwent traditional repair (Ref. 18). Therefore, the mesh arm of the Withagen et al. study was less ''challenged'' than the non-mesh arm. Iglesia et al. did not show an anatomic benefit in the posterior compartment following posterior repair with mesh augmentation (Ref. 17).

The only RCT to compare posterior repair with mesh to traditional posterior repair (without multiple compartment repair) showed that subjects who underwent repair using a synthetic absorbable mesh had worse anatomic outcomes than those who underwent traditional repair (Ref. 19). Two other RCTs that compared combined anterior and posterior repair with mesh to traditional anterior and posterior repair found no additional anatomic benefit to mesh augmentation in the posterior compartment (Refs. 19 and 20). One of these used a synthetic absorbable mesh (Ref. 19) and the other used a synthetic nonabsorbable mesh (Ref. 20).

A 2010 review of management of posterior vaginal wall repair by Kudish and Iglesia states ''studies published to date do not support use of biologic or synthetic absorbable grafts in reconstructive surgical procedures of the posterior compartment as these repairs have not improved anatomic or functional outcomes over traditional posterior [repair]'' (Ref. 5). At the time of publication of this review, no studies comparing posterior repair with synthetic non-absorbable mesh to traditional posterior repair had been performed. However, as noted previously, reported outcomes in the three trials in which synthetic non-absorbable mesh was used in the posterior compartment (Refs. 17, 18, 20) were generally consistent with the conclusions of Kudish and Iglesia (Ref. 5). These authors also note that, when erosion of vaginal mesh occurs in the posterior compartment, it often requires excision of exposed mesh.

The literature does suggest that there may be an anatomic benefit to anterior repair with mesh augmentation (Refs. 6, 9, 10, 13, 18, 19, 22, 24–30); however, there are significant limitations in the available data. The majority of the trials that showed an anatomic benefit to anterior repair with mesh augmentation compared to traditional repair used synthetic non-absorbable mesh, but only one used a synthetic absorbable material (Ref. 19) and one used a non-synthetic material (Ref. 28). Therefore, these results may not be generalizable to all mesh types. Only 2 of 11 peer-reviewed publications on anterior prolapse repair were evaluator-blinded prospective RCTs (Refs. 20, 27) such that evaluator bias was minimized, and these two RCTs reached different conclusions. One showed no anatomical improvement for the mesh cohort compared to the traditional non-mesh repair cohort (Ref. 20). The second evaluator-blinded RCT did show an anatomic benefit for mesh in the anterior compartment, but this RCT was a single-center, single-investigator study (Ref. 27). Therefore, the outcomes from this study may not be representative of procedures performed at other centers by other operators.

Although multiple trials reported in the literature report a benefit to POP repair with mesh compared to traditional repair, these trials were designed to evaluate an endpoint indicative of ideal anatomic support, rather than an outcome more representative of improvement in patient symptoms. A re-analysis of one RCT comparing three techniques for anterior repair (two without mesh and one with synthetic absorbable mesh augmentation) showed no differences in effectiveness across all study groups when less stringent (and arguably, more clinically meaningful) criterion for success, defined as prolapse at or above the vaginal opening, was applied (Ref. 31). The original trial defined recurrent prolapse as greater than Stage 1 at 1 year postimplant and, using this definition, had concluded that subjects who had anterior repair with mesh augmentation were less likely to have recurrent prolapse.

Additionally, patients who undergo traditional repair have equivalent improvement in quality of life (Refs. 20, 22, 27, 32) compared to patients who undergo transvaginal POP repair with mesh. The differential in reported success rates between mesh and non-mesh repairs is not reflected in the comparison of quality of life outcomes where no difference was observed, indicating that use of a non-symptom related outcome measure (i.e., ideal pelvic support determined by POP–Q) likely accounts for this differential.

C. Safety and Effectiveness of Surgical Instrumentation for Use With Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair and Other Urogynecologic Procedures

Implantation of surgical mesh for urogynecologic procedures, such as POP repair, is a complex procedure, and specialized surgical instrumentation has been developed to aid the insertion, placement, fixation, and anchoring of the surgical mesh. The procedure is performed ''blind,'' such that the surgeon cannot directly visualize placement of the surgical mesh, and is reliant on the surgical instrumentation, palpation of anatomic landmarks, and experience for accessing critical ligaments and attaching anchors and other devices needed to secure the mesh. Because adverse events related to surgical mesh are typically submitted with reference to the product code for the mesh itself, it is difficult to distinguish adverse events related to the surgical instrumentation from those directly related to the surgical mesh. However, as was discussed by the Panel (see section VIII), there is a concern that the use of surgical instrumentation, such as long trocars, can result in significant adverse events to patients. From January 1, 2011, to December 31, 2013, FDA received 843 reports related to bleeding, hematoma, and blood loss, 42 reports related to organ perforation, and 196 reports of neuromuscular problems through the MAUDE database for surgical mesh indicated for POP. In addition, clinical studies, case reports, and systematic literature reviews in the published literature have reported similar perioperative adverse events (Refs. 7, 9, 11–13, 17, 18, 22, 24–25, 29). Given the nature of these adverse events, it is reasonable to assume that they were caused by or related to the use of instrumentation to insert, place, fix, or anchor the surgical mesh perioperatively.

In addition, use of surgical instrumentation may lead to adverse tissue reaction as a result of using non-biocompatible materials. It may also lead to infection due to inadequate sterilization, inadequate reprocessing procedures, or use beyond the labeled expiration date. These are general risks that apply to devices that have patient contact, are provided sterile, and are reusable.

FDA tentatively concludes that appropriately designed and labeled instrumentation is critical to the safe and effective use of surgical mesh for female urological and gynecological procedures, and that surgical instrumentation for this use must be adequately tested prior to marketing.

VIII. 2011 Classification Panel Meeting

In October 2008, as a result of over 1,000 adverse events received, FDA issued a Public Health Notification (PHN) informing clinicians and their patients of the adverse event findings related to use of urogynecologic surgical mesh (Ref. 33). The PHN also provided recommendations for clinicians on how to mitigate the risks associated with these devices and information for their patients. On July 13, 2011, based on an updated adverse event search, FDA issued a Safety Communication titled ''UPDATE on Serious Complications Associated With Transvaginal Placement of Surgical Mesh for Pelvic Organ Prolapse'' (Ref. 34). On the same date, FDA also issued a white paper titled ''Urogynecologic Surgical Mesh: Update on the Safety and Effectiveness of Transvaginal Placement for Pelvic Organ Prolapse'' (Ref. 35). The continued reports of adverse events also prompted FDA to consider the information available regarding the use of surgical mesh for transvaginal POP repair and to evaluate whether the classification of this device type should be reconsidered.

In accordance with section 513(e)(1) of the FD&C Act and 21 CFR part 860, subpart C, on September 8 and 9, 2011, FDA referred the proposed reclassification to the Panel for its recommendations on the proposed change in the device's classification from class II to class III, among other related questions (Ref. 14). The Panel consensus was that a favorable benefit-risk profile for surgical mesh used for transvaginal POP repair has not been well established. The Panel discussed the number of serious adverse events associated with the use of these devices and concluded that their safety is in question. In addition, the Panel consensus was that the effectiveness of surgical mesh for transvaginal POP repair has not been well established, and the device may not be more effective for this use than traditional non-mesh surgery, especially for the apical and posterior vaginal compartments.

The Panel consensus was that premarket clinical data are needed for surgical mesh for transvaginal POP repair. The majority of panel members recommended that these devices be evaluated against a control arm of traditional ''native-tissue'' (nonmesh) repair to demonstrate a reasonable assurance of safety and effectiveness for the devices. Panel members also emphasized that these studies should evaluate both anatomic outcomes and patient satisfaction and that the duration of followup should be at least 1 year, with additional followup in a postmarket setting.

The Panel's consensus was that each individual mesh device should undergo a comparison to native tissue repair in order to establish a reasonable assurance of safety and effectiveness. The Panel's consensus was that general controls and special controls together would not be sufficient to provide reasonable assurance of the safety and effectiveness of surgical mesh indicated for transvaginal POP repair, and that these devices should be reclassified from class II to class III. Panel members also expressed concern that the use of surgical instrumentation, such as long trocars, can result in significant adverse events to patients.

Panel members also concluded that manufacturers of surgical mesh indicated for transvaginal POP repair should conduct postmarket studies of currently marketed devices. Beginning on January 3, 2012, FDA issued postmarket surveillance study orders to manufacturers under section 522 of the FD&C Act (21 U.S.C. 360*l*) (''section 522 orders'') for transvaginal POP mesh products that are already legally marketed. As of the date of this order, FDA had issued 126 section 522 orders to 33 manufacturers of transvaginal POP mesh products.

The Panel also emphasized that additional work should be focused on patient labeling and informed consent, including providing benefit-risk information on available treatment options for POP—surgical and nonsurgical options—so patients understand long-term safety and effectiveness outcomes. Panel members also recommended mandatory registration of implanted devices, as well as surgeon training and credentialing. They encouraged FDA to work with other stakeholders, such as clinical professional organizations and industry, and to use existing databases and new data collection tools (e.g., registries) to develop a meaningful database on postmarket clinical outcomes.

IX. Summary of Reasons for Reclassification

Based on the information reviewed by FDA relating to the safety and effectiveness of surgical mesh for transvaginal POP repair, including the valid scientific evidence discussed in section VII, FDA tentatively concludes that surgical mesh for transvaginal POP repair should be reclassified from class II to class III. As established in section

513(a)(1)(C) of the FD&C Act and § 860.3(c)(3), a device is in class III if insufficient information exists to determine that general controls and special controls together are sufficient to provide reasonable assurance of its safety and effectiveness and the device is purported or represented to be for a use that is life-supporting or life-sustaining, or for a use which is of substantial importance in preventing impairment of human health, or if the device presents a potential unreasonable risk of illness or injury. FDA tentatively agrees with the Panel consensus that the safety and effectiveness of this device type has not been established and that these devices should be evaluated in clinical studies that compare the device to native tissue repair in order to establish a reasonable assurance of safety and effectiveness. Therefore, FDA tentatively concludes that general and special controls together are not sufficient to provide a reasonable assurance of the safety and effectiveness of surgical mesh intended for transvaginal POP repair. In addition, in the absence of an established positive benefit-risk profile, the risks to health associated with the use of surgical mesh for transvaginal POP repair identified previously present a potential unreasonable risk of illness or injury.

Based on FDA's tentative determination that general controls and special controls together are not sufficient to provide reasonable assurance of safety and effectiveness of surgical mesh intended for transvaginal POP repair and that the device presents a potential unreasonable risk of illness or injury, FDA proposes to reclassify surgical mesh for transvaginal POP repair from class II to class III.

The procedure for implanting surgical mesh typically involves use of surgical instrumentation, some of which is specifically designed and labeled for urogynecologic procedures, including transvaginal POP procedures. Instrumentation for this use is currently classified under existing regulations for class I devices, including § 876.4730 (manual gastroenterology-urology surgical instrument and accessories) or § 878.4800 (manual surgical instrument for general use).

FDA tentatively concludes that valid scientific evidence demonstrates that special controls, in addition to the general controls, are necessary to provide a reasonable assurance of safety and effectiveness for surgical instrumentation used for implanting surgical mesh for urogynecological use.

Therefore, FDA proposes to reclassify instrumentation used for implanting surgical mesh for urogynecological use from class I to class II (special controls). If the proposed reclassification is finalized, a premarket notification submission that addresses, among other things, the special controls established for the device, would be required prior to marketing the device.

X. Special Controls

FDA tentatively concludes that the following special controls, in addition to general controls, are sufficient to mitigate the risks to health described in section VI attributable to the surgical instrumentation for implanting surgical mesh for urogynecological procedures:

- The device must be demonstrated to be biocompatible;
- The device must be demonstrated to be sterile;
- Performance data must support the shelf life of the device by demonstrating package integrity and device functionality over the requested shelf life;
- Bench and/or cadaver testing must demonstrate safety and effectiveness in expected-use conditions; and
- Labeling must include:
  - Information regarding the mesh design that may be used with the device;
  - Detailed summary of the clinical evaluations pertinent to use of the device;
  - Expiration date; and
  - Where components are intended to be sterilized by the user prior to initial use and/or are reusable, validated methods and instructions for sterilization and/or reprocessing of any reusable components.

Table 1 shows how the risks to health identified in section VI associated with urogynecological surgical mesh instrumentation can be mitigated by the proposed special controls.

TABLE 1—HEALTH RISK AND MITIGATION MEASURE FOR UROGYNECOLOGICAL SURGICAL MESH INSTRUMENTATION

Identified risk	Special controls
Perioperative Injury	Bench and/or Cadaver Testing. Labeling. Shelf Life Testing.
Pelvic Pain and Neuromuscular Problems.	Bench and/or Cadaver Testing. Shelf Life Testing. Labeling.
Infection	Sterilization Validation. Shelf Life Testing. Labeling
Adverse Tissue Reaction.	Biocompatibility.

FDA believes that bench and/or cadaver testing can help ensure that urogynecologic surgical mesh instrumentation is appropriately designed and limits damage to blood vessels, nerves, connective tissue, and other structures. Also, such evaluation may help limit the adverse events, such as perioperative injury (organ perforation or injury and bleeding), pelvic pain, and neuromuscular problems, reported to the MAUDE database and described in the published literature as discussed in section VII. In addition, labeling specifying the mesh type that may be used with the device and provision of a detailed summary of the clinical evaluations pertinent to use of the device will also mitigate these risks. Lastly, shelf life testing demonstrating that the device maintains its functionality over the duration of its shelf life will also mitigate damage to blood vessels, nerves, connective tissue, and other structures, and perioperative risks.

Also, the risk of adverse tissue reaction as a result of using non-biocompatible materials can be mitigated by biocompatibility testing. FDA finds that the risk of infection due to inadequate sterilization and/or reprocessing instructions/procedures can be mitigated through sterilization validation testing and the inclusion of validated reprocessing instructions in the device labeling. In addition, FDA believes that shelf life testing and inclusion of an expiration date on the labeling will mitigate the risk of infection by ensuring that the device maintains its sterility over the duration of its shelf life. The expiration date may prevent use of the device after its validated shelf life.

FDA clarifies here that these special controls are specific to surgical instrumentation specifically intended to be used with surgical mesh for urogynecological procedures. FDA intends to evaluate instrumentation provided with a mesh kit as part of the review of that surgical mesh.

In addition, the surgical instrumentation used for implanting surgical mesh for urogynecological procedures are prescription devices within the meaning of 21 CFR 801.109.

XI. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Paperwork Reduction Act of 1995

This proposed order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information under 21 CFR part 822 have been approved under OMB control number 0910–0449; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

XIII. Proposed Effective Date

FDA is proposing that any final order based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final order.

XIV. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Section 513(e) as amended requires FDA to issue a final order rather than a regulation. FDA will codify reclassifications resulting from changes issued in final orders in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this proposed order we are proposing to codify the reclassification of surgical mesh for transvaginal pelvic organ prolapse repair into class III and proposing to codify the reclassification of specialized surgical instrumentation for use with urogynecologic surgical mesh devices into class II (special controls).

XV. Comments

Interested persons may submit either electronic comments regarding this proposed order to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

XVI. References

FDA has placed the following references on display in the Division of Dockets Management (see **ADDRESSES**). Interested persons may see them between 9 a.m. and 4 p.m., Monday through Friday, and online at *http://www.regulations.gov.* (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

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List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 884.4910 to Subpart E to read as follows:

§ 884.4910 Specialized surgical instrumentation for use with urogynecologic surgical mesh.

(a) *Identification.* Surgical instrumentation for use with surgical mesh for urogynecological procedures is a prescription device used to aid in insertion, placement, fixation, or anchoring of surgical mesh for procedures including transvaginal pelvic organ prolapse repair, sacrocolpopexy (transabdominal pelvic organ prolapse repair), and treatment of female stress urinary incontinence. Examples of such surgical instrumentation include needle passers and trocars, needle guides, fixation tools, and tissue anchors. This device does not include manual gastroenterology-urology surgical instrument and accessories (§ 876.4730) nor manual surgical instrument for general use (§ 878.4800).

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The device must be demonstrated to be biocompatible;

(2) The device must be demonstrated to be sterile;

(3) Performance data must support the shelf life of the device by demonstrating package integrity and device functionality over the requested shelf life;

(4) Bench and/or cadaver testing must demonstrate safety and effectiveness in expected-use conditions; and

(5) Labeling must include:

(i) Information regarding the mesh design that may be used with the device;

(ii) Detailed summary of the clinical evaluations pertinent to use of the device;

(iii) Expiration date; and

(iv) Where components are intended to be sterilized by the user prior to initial use and/or are reusable, validated methods and instructions for sterilization and/or reprocessing of any reusable components.

■ 3. Add § 884.5980 to Subpart F to read as follows:

§ 884.5980 Surgical mesh for transvaginal pelvic organ prolapse repair.

(a) *Identification.* Surgical mesh for transvaginal pelvic organ prolapse repair is a prescription device intended to reinforce soft tissue in the pelvic floor. This device is a porous implant that is synthetic, non-synthetic, or both. This device does not include surgical mesh for other intended uses (§ 878.3300).

(b) *Classification.* Class III (premarket approval).

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09907 Filed 4–29–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. FDA–2014–N–0298]

Effective Date of Requirement for Premarket Approval for Surgical Mesh for Transvaginal Pelvic Organ Prolapse Repair

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing a proposed administrative order to require the filing of a premarket approval application (PMA) if the surgical mesh for transvaginal pelvic organ prolapse (POP) repair device is reclassified from class II to class III. The Agency is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's PMA requirements and the benefit to the public from the use of the device.

DATES: Submit either electronic or written comments on this proposed order by July 30, 2014. FDA intends that, if a final order based on this proposed order is issued, anyone who wishes to continue to market the device will need to submit a PMA within 90 days of the effective date of the final order or on the last day of the 30th

calendar month beginning after the month in which the classification of the device in class III became effective, whichever occurs later. See section VI for more information about submitting a PMA. See section X for the effective date of any final order that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2014–N–0298, 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:

• *Mail/Hand delivery/Courier (for paper 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–2014–N–0298 for this rulemaking. 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: Melissa Burns, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1646, Silver Spring, MD 20993, 301–796–5616, *melissa.burns@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act of 2004 (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) to such a preamendments device or to a device within that type (both the preamendments and substantially equivalent devices are referred to as preamendments class III devices) may be marketed without submission of a PMA until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act directs FDA to issue an order requiring premarket approval for a preamendments class III device.

Section 515(f) of the FD&C Act provides an alternative pathway for meeting the premarket approval requirement. Under section 515(f), manufacturers may meet the premarket approval requirement if they file a notice of completion of a product development protocol (PDP) approved under section 515(f)(4) of the FD&C Act and FDA declares the PDP completed under section 515(f)(6)(B) of the FD&C Act. Accordingly, the manufacturer of a preamendments class III device may comply with a call for PMAs by filing a PMA or a notice of completion of a PDP. In practice, however, the option of filing a notice of completion of a PDP has rarely been used. For simplicity, although the PDP option remains available to manufacturers in response to a final order under section 515(b) of the FD&C Act, this document will refer only to the requirement for filing and obtaining approval of a PMA.

On July 9, 2012, FDASIA was enacted. Section 608(b) of FDASIA amended section 515(b) of the FD&C Act, changing the process for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all affected stakeholders, including patients, payors, and providers. In September 2011, FDA held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to surgical mesh for transvaginal POP repair. As explained further in section V, this device classification panel meeting discussed whether surgical mesh for transvaginal POP repair should be reclassified or remain in class II, and the discussion included whether PMAs should be required for these devices. The panel recommended that the device be reclassified into class III because general controls and special controls together would not be sufficient to provide reasonable assurance of the safety and effectiveness of the device. The panel consensus was that premarket clinical data are needed for surgical mesh for transvaginal POP repair, and that each individual mesh device should be evaluated against a control arm of traditional ''native tissue'' (non-mesh) repair to demonstrate a reasonable assurance of safety and effectiveness. FDA is not aware of new information that would provide a basis for a different recommendation or findings. Indeed, the additional information received since the 2011 panel meeting and discussed further in section V highlights the need to review these devices under a PMA and reinforces the recommendation and findings of the panel.

Section 515(b)(2) of the FD&C Act provides that a proposed order to require premarket approval shall contain: (1) The proposed order, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by

requiring the device to have an approved PMA and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed order and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed order, consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

A preamendments class III device may be commercially distributed without a PMA until 90 days after FDA issues a final order requiring premarket approval for the device, or 30 months after classification of the device in class III under section 513 of the FD&C Act becomes effective, whichever is later. Elsewhere in this issue of the **Federal Register**, FDA is proposing an order to reclassify surgical mesh for transvaginal POP repair from class II to class III. Therefore, assuming the reclassification order and the order to require PMAs are finalized, the date by which a PMA for surgical mesh for transvaginal POP repair must be filed will depend on the date the final reclassification order becomes effective and the date the final order to require PMAs is issued. If a PMA is not filed for such device by the later of the two dates specified in section 501(f)(2)(B) of the FD&C Act (21 U.S.C. 351(f)(2)(B)) (i.e., the 90th day after the date the order to require PMAs is issued and the last day of the 30th calendar month beginning after the month in which the classification in class III becomes effective), then the device would be deemed adulterated under section 501(f) of the FD&C Act unless the device is distributed for investigational use under an approved application for an investigational device exemption (IDE).

In accordance with section 515(b) of the FD&C Act, interested persons are being offered the opportunity to request reclassification of surgical mesh for transvaginal POP repair.

II. Regulatory History of the Device

Surgical mesh is a preamendments device classified into class II (§ 878.3300 (21 CFR 878.3300)). Beginning in 1992, FDA cleared premarket notification (510(k)) submissions for surgical mesh indicated for transvaginal POP repair under the general surgical mesh classification regulation § 878.3300. FDA has cleared over 100 510(k) submissions for surgical mesh with a POP indication. Elsewhere in this issue of the **Federal Register**, FDA is proposing to reclassify this device into class III under section 513(e) of the FD&C Act.

III. Dates New Requirements Apply

Assuming FDA finalizes the order proposing reclassification of surgical mesh for transvaginal POP repair this device will be classified into class III. In accordance with sections 501(f)(2)(B) and 515(b) of the FD&C Act, FDA is proposing to require that a PMA be filed with the Agency by the last day of the 30th calendar month beginning after the month in which the classification of the device in class III became effective, or on the 90th day after the date of the issuance of a final order under 515(b), whichever is later. An applicant whose surgical mesh for transvaginal POP repair was legally in commercial distribution before May 28, 1976, or whose surgical mesh for transvaginal POP repair has been found to be substantially equivalent prior to the issuance of a final order under section 515(b), will be permitted to continue marketing such class III device during FDA's review of the PMA, provided that a PMA is timely filed. FDA intends to review any PMA for the device within 180 days. FDA cautions that, under section 515(d)(1)(B)(i) of the FD&C Act, the Agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the Agency finds that ''. . . the continued availability of the device is necessary for the public health.''

FDA intends that, under § 812.2(d) (21 CFR 812.2(d)), the publication in the **Federal Register** of any final order based on this proposal will include a statement that, as of the date on which the filing of a PMA is required, the exemptions in § 812.2(c)(1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any device that is subject to the final order and that is: (1) Not legally on the market on or before that date or (2) legally on the market on or before that date but for which a PMA is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA for a class III device is not filed with FDA within 90 days of the date of issuance of the final order requiring premarket approval for the device or 30 months after the classification of the device into class III, whichever is later, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations in part 812 are met. The requirements for investigational use of significant risk devices include submitting an IDE application to FDA for review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued under § 812.30. FDA, therefore, recommends that IDE applications be submitted to FDA at least 30 days before the date a PMA is required to be filed to avoid interrupting investigations.

IV. Device Subject to This Proposal

Surgical mesh for transvaginal POP repair can be placed abdominally or transvaginally to repair POP. When placed transvaginally, surgical mesh can be placed in the anterior vaginal wall to aid in the correction of cystocele (anterior repair), in the posterior vaginal wall to aid in correction of rectocele (posterior repair), or attached to the vaginal wall and pelvic floor ligaments to correct uterine prolapse or vaginal apical prolapse (apical repair). These devices are made of synthetic material, non-synthetic material, or a combination of both. They are marketed as either stand alone mesh products or mesh kits (i.e., the product includes mesh and instrumentation to aid insertion, placement, fixation, and/or anchoring).

Elsewhere in this issue of the **Federal Register**, FDA is proposing to identify surgical mesh for transvaginal POP repair in the new § 884.5980 (21 CFR 884.5980) in the following way: Surgical mesh for transvaginal POP repair is a prescription device intended to reinforce soft tissue in the pelvic floor. This device is a porous implant that is synthetic, non-synthetic, or both. This device does not include surgical mesh for other intended uses (see § 878.3300).

V. Proposed Findings With Respect to Risks and Benefits for Surgical Mesh for Transvaginal POP Repair

As required by section 515(b) of the FD&C Act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an

approved PMA and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the Obstetrics and Gynecological Devices Panel from the meeting on September 8–9, 2011, and any additional information that FDA has obtained. Additional information regarding the risks as well as the classification of this device can be found in section V.3 as well as in the proposed order, published elsewhere in this issue of the **Federal Register**, proposing to reclassify these devices into class III. The device has the potential to benefit the public by aiding in the correction of cystocele (anterior repair), rectocele (posterior repair), uterine prolapse, or vaginal apical prolapse (apical repair). The risks associated with the device include perioperative risks (organ perforation or injury and bleeding); mesh exposure; mesh extrusions; vaginal scarring, shrinkage, and tightening; pelvic pain; infection; de novo dyspareunia; de novo voiding dysfunction (e.g., incontinence); neuromuscular problems (including groin and leg pain); recurrent prolapse; and resurgery.

A. Summary of Data

In October 2008, as a result of over 1,000 adverse events received, FDA issued a Public Health Notification (PHN) informing clinicians and their patients of the adverse event findings related to use of urogynecologic surgical mesh (Ref. 1). The PHN also provided recommendations for clinicians on how to mitigate the risks associated with these devices and information for their patients. On July 13, 2011, based on an updated adverse event search, FDA issued a Safety Communication entitled ''UPDATE on Serious Complications Associated With Transvaginal Placement of Surgical Mesh for Pelvic Organ Prolapse'' (Ref. 2).

The continued reports of adverse events also prompted FDA to consider other available information regarding the use of surgical mesh for transvaginal POP repair and to evaluate whether the classification of this device type should be reconsidered. FDA systematically evaluated the peer-reviewed scientific literature to revisit the fundamental question of the safety and effectiveness of surgical mesh for transvaginal POP repair. Based on its review, FDA believes that the rate and severity of mesh-specific adverse events following vaginal POP repair with mesh calls into question the safety of these devices. Additionally, the available scientific literature does not provide evidence that surgical mesh used for vaginal POP repair offers a clear improvement in effectiveness when compared to traditional repair. FDA's detailed evaluation of the scientific literature is discussed in FDA's executive summary for the September 8–9, 2011, panel meeting which is discussed further in this document (Ref. 3).

On September 8–9, 2011, FDA convened a meeting of the Obstetrics and Gynecological Devices Panel (the Panel), a device classification panel described in section 513(b) of the FD&C Act, and referred the proposed reclassification of surgical mesh for transvaginal POP repair to the Panel for its recommendations on the proposed change in the device's classification from class II to class III (Ref. 4). The Panel consensus was that a favorable benefit-risk profile for surgical mesh used for transvaginal POP repair has not been well established. The Panel discussed the number of serious adverse events associated with the use of these devices and concluded that their safety is in question. In addition, the Panel consensus was that the effectiveness of surgical mesh for transvaginal POP repair has not been well established, and the device may not be more effective than traditional non-mesh surgery, especially for the apical and posterior vaginal compartments.

Additionally, the Panel consensus was that premarket clinical data are needed for surgical mesh for transvaginal POP repair, and the majority of panel members recommended that each individual mesh be evaluated against a control arm of traditional ''native-tissue'' (non-mesh) repair to demonstrate a reasonable assurance of safety and effectiveness for the device. Panel members emphasized that these studies should evaluate both anatomic outcomes and patient satisfaction and that the duration of followup should be at least 1 year, with additional followup in a postmarket setting.

The Panel's consensus was that each individual mesh device needed to undergo a comparison to native tissue repair in order to establish a reasonable assurance of safety and effectiveness. The Panel also emphasized that additional work should be focused on patient labeling and informed consent, including providing patients with benefit-risk information on available treatment options for POP—surgical and non-surgical options so patients understand long-term safety and effectiveness outcomes. Panel members also recommended mandatory registration of implanted devices, as well as surgeon training and credentialing. They encouraged FDA to work with other stakeholders, such as clinical professional organizations and industry, to use existing databases and new data collection tools (e.g., registries) to develop a meaningful database on postmarket clinical outcomes.

B. Risks to Health

FDA has evaluated the risks to health associated with use of surgical mesh indicated for transvaginal POP repair. In doing so, FDA considered information from the reports and recommendations of the Panel meeting on September 8, 2011 (Ref. 4), the adverse event reports for these devices in FDA's Manufacturer and User Facility Device Experience Database, and the published scientific literature which is discussed in FDA's executive summary for the September 2011 Panel meeting (Ref. 3). Based on this information, FDA has identified the following risks:

1. Perioperative risks: Organ perforation or injury and bleeding (including hemorrhage/hematoma)
2. Vaginal mesh exposure: Clinical sequelae include pelvic pain, infection, de novo dyspareunia (painful sex for patient or partner), de novo vaginal bleeding, atypical vaginal discharge, and the need for additional corrective surgeries (possibly including mesh excision).
3. Mesh extrusion (e.g., into the bladder or rectum): Clinical sequelae include pelvic pain, infection, de novo dyspareunia, fistula formation, and the need for additional corrective surgeries (possibly including suprapubic catheter, diverting colostomy).
4. Other risks that can occur without mesh exposure or extrusion: Vaginal scarring, shrinkage, and tightening (possibly caused by mesh/tissue contraction); pelvic pain; infection (including pelvic abscess); de novo dyspareunia; de novo voiding dysfunction (e.g., incontinence); recurrent prolapse; and neuromuscular problems (including groin and leg pain).

C. Benefits of the Device

Surgical mesh for transvaginal POP repair has the potential to benefit the public by aiding in the correction of cystocele (anterior repair), rectocele (posterior repair), uterine prolapse, or vaginal apical prolapse (apical repair). These findings are based on the reports and recommendations of the Panel meeting (Ref. 4), and the published scientific literature, which is discussed in FDA's executive summary for the Panel meeting (Ref. 3).

D. Summary of FDA Findings

FDA tentatively concludes that surgical mesh for transvaginal POP

repair should be reclassified from class II to class III. FDA tentatively agrees with the Panel's consensus that the safety and effectiveness of this device type has not been established. FDA tentatively concludes that insufficient information exists regarding the risks and benefits of the device in order for FDA to determine that general and special controls together will provide reasonable assurance of the safety and effectiveness of surgical mesh intended for transvaginal POP repair. In addition, FDA tentatively determines that the risks to health identified previously in this document for the use of surgical mesh for transvaginal POP repair, in the absence of an established positive benefit-risk profile, present a potential unreasonable risk of illness or injury. Further, because FDA tentatively finds that there is insufficient valid scientific evidence, as defined in § 860.7 (21 CFR 860.7), for FDA to determine the probable risks and the effectiveness of the device type, FDA is proposing to require an individual demonstration that a reasonable assurance of safety and effectiveness exists for each device within this type. The manufacturer of each individual device will have the opportunity to demonstrate the safety and effectiveness of the device for its intended use by submitting a premarket approval application.

VI. PMA Requirements

A PMA for surgical mesh for transvaginal POP repair would need to include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on the following: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the device for its intended use (see § 860.7(c)(2)). Valid scientific evidence is evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness. (See § 860.7(c)(2).)

To present reasonable assurance of safety and effectiveness of surgical mesh for transvaginal POP repair, FDA tentatively concludes that manufacturers should provide the information summarized in this document. In addition, FDA strongly encourages manufacturers to meet with the Agency early through the presubmission program for any assistance in preparation of their PMA.

A. Indications for Use

Manufacturers should provide indications for use statements that include the route of placement for the mesh (i.e., transvaginal), the anatomical site of repair (e.g., anterior/apical, posterior/apical, or total), and specify any instrumentation required for implantation.

B. Device Description

A detailed description of the mesh design (e.g., material, material source, colorants) and use (i.e., mode of operation), as well as a brief description of the manufacturing processes, including a flowchart that describes how the mesh is assembled, should be provided.

If introducer instrumentation is packaged with the mesh, then a detailed description of the introducer instrumentation (e.g., material, material source, colorants) and the manufacturing processes for the instrumentation should be provided. Instrumentation that is packaged with the mesh will be reviewed in the PMA application. Introducer instrumentation that is provided separately and not packaged with the mesh will be reviewed separately in a 510(k) notification.

C. Sterilization and Shelf Life

Manufacturers should provide data that demonstrates that the mesh and the accessory introducer instrumentation retain their mechanical characteristics following sterilization and for the entire length of the intended shelf life. The mechanical characteristics for the mesh include at minimum: Compliance (i.e., elastic modulus), tensile strength, suture pullout strength, mesh arm(s) strength, burst strength, and tear resistance. If the introducer instrumentation includes a mesh-deployment mechanism, this mechanism should function throughout the shelf life of the device.

D. Reprocessing

If the introducer instrumentation is intended for reuse, the manufacturer should provide data to validate the cleaning and disinfection/sterilization instructions.

E. Biocompatibility

Manufacturers should conduct biocompatibility testing on the device, including the mesh implant and introducer instrumentation, to fully characterize its safety profile prior to initiation of animal and clinical studies. This includes appropriate testing as outlined in Blue Book Memo #G–95–1 ''Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing''' (Ref. 5) (e.g., cytotoxicity, genotoxicity, hemolysis, sensitization, irritation or intracutaneous reactivity, acute systemic toxicity, subchronic toxicity, chronic toxicity, implantation and materials-mediated pyrogenicity).

F. Preclinical Bench Testing

Manufacturers should perform testing to obtain the following information on the mesh implant: Thickness, weave characteristics (i.e., woven or nonwoven), fiber type (i.e., monofilament or multifilament) exact pore size, density, compliance (i.e., elastic modulus), tensile strength, suture pullout strength, mesh arm(s) strength, burst strength, and tear resistance.

For devices composed of materials from animal sources, manufacturers should provide information on the species and tissue from which the animal material was derived, details on how the health of the herd is maintained, and how the health of each animal is maintained. Furthermore, manufacturers should test for residual cellular/DNA/protein matter on animal-derived mesh.

For devices containing degradable/absorbable components, manufacturers should provide in vitro and in vivo degradation rate data with supporting mechanical data (as described previously) to demonstrate adequate strength over time.

G. Preclinical Animal Studies

Manufacturers should conduct animal studies to evaluate in vivo performance of mesh in an appropriate animal model. If designed appropriately, these studies may also obviate the need for

separate implantation studies to assess biocompatibility as indicated previously. The animal studies should be conducted for 6 months' duration to evaluate shrinking and/or calcification of the mesh, histology of the surrounding tissue, and extraction of the mesh. In addition, implantation of the mesh should occur in an appropriate anatomic location (i.e., not a subcutaneous pocket). Complete study reports for all the preclinical studies should include, but not be limited to: (1) A prospectively designed protocol and all protocol amendments; (2) a detailed description of the study design (e.g., description of animal species/animal models, control and test articles used, dose levels, detailed procedures for test article administration and collection of all study protocol parameters); (3) results for all parameters evaluated for each animal in the study; and (4) the analysis and interpretation of the study data.

H. Premarket Clinical Studies

FDA tentatively concludes that premarket clinical data is needed for all surgical mesh indicated for transvaginal POP repair to demonstrate a reasonable assurance of safety and effectiveness. FDA anticipates that these data may need to be collected in a patient- and evaluator-masked study that compares surgical mesh to a non-mesh control (i.e., traditional native tissue transvaginal repair) with respect to safety and effectiveness. This study should evaluate a clinically relevant measure(s) of effectiveness (e.g., prolapse at or above the hymenal ring, subjective cure, and quality of life, no recurrent prolapse), key safety outcomes (e.g., serious adverse events, defined as hospital readmission or return to operating room), urinary and bowel function, sexual function, etc., as outcome measures. At least 1 year of outcome data should be provided in the PMA and an additional 2–4 years of followup should be conducted postmarket.

FDA intends to consider proposals for different study designs that meet the intent of the previously mentioned list and will decide on a case-by-case basis whether each proposed study design is likely to generate data adequate to support a PMA. FDA also intends to consider the use of study data collected by manufacturers in response to FDA issued postmarket surveillance study orders issued beginning on January 3, 2012, under section 522 of the FD&C Act (21 U.S.C. 360*l*) for transvaginal POP mesh products that are already legally marketed.

I. Professional Labeling

FDA would expect the professional (physician) labeling to include the following elements:

- Indications for Use statement;
- Contraindications;
- Device description (e.g., material type, introducer instrumentation included, and degradation rate when applicable);
- Images of the mesh and introducer instrumentation;
- Warnings;
- Precautions;
- Adverse event rates, including:
  - Perioperative risks:
    - Organ perforation or injury;
    - Bleeding (including hemorrhage and hematoma);
  - Mesh exposure in the vagina;
  - Mesh extrusion into another organ;
  - Pelvic pain;
  - Infection (by type);
  - de novo dyspareunia;
  - Vaginal scarring, shrinkage, and tightening;
  - de novo vaginal bleeding;
  - Atypical vaginal discharge;
  - Fistula formation;
  - de novo voiding dysfunction (e.g., incontinence);
  - Neuromuscular problems (including groin and leg pain);
  - Revision/resurgery;
  - Recurrent prolapse;
- Summary of clinical data; and
- Step-by-step instructions, with images, on proper placement of the mesh.

J. Patient Labeling

FDA would also expect patient labeling to be provided for each device, and it should include, but not be limited to: (1) An explanation of POP, including anatomical issues, causes, and symptoms; a discussion regarding all available treatment options, including known risks and benefits of mesh placement based on the results of the clinical trial conducted; (2) a statement that surgical mesh is a permanent implant; instructions for postoperative care; and (3) a notice of availability of an FDA Safety Communication. Patient labeling should also include a patient identification card that contains at a minimum the following information: Device name and lot number; patient name; date of implant; the type of repair performed (e.g., anterior or posterior); and the name and contact information for implanting physician and the device manufacturer.

VII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA for a device, FDA is required by section 515(b)(2)(D) of the FD&C Act to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the FD&C Act.

A request for a change in the classification of surgical mesh for transvaginal POP repair devices is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device. Interested persons may also submit a reclassification petition related to the classification of the device to docket number for the proposed order reclassifying surgical mesh for transvaginal POP repair that is published elsewhere in this issue of the **Federal Register**.

VIII. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; the collections of information in part 812 have been approved under OMB control number 0910–0078; the collections of information under 21 CFR part 822 have been approved under OMB control number 0910–0449; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

X. Proposed Effective Date

FDA is proposing that any final order based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final order.

XI. Codification of Orders

Prior to the amendments by FDASIA, section 515(b) of the FD&C Act provided for FDA to issue regulations to require approval of an application for premarket approval for preamendments devices or devices found substantially equivalent to preamendments devices. Section 515(b) of the FD&C Act, as amended by FDASIA, provides for FDA to require approval of an application for premarket approval for such devices by issuing a final order, following the issuance of a proposed order in the **Federal Register**. FDA will continue to codify the requirement for an application for premarket approval, resulting from changes issued in a final order, in the Code of Federal Regulations (CFR). Therefore, under section 515(b)(1)(A) of the FD&C Act, as amended by FDASIA, in this proposed order, we are proposing to require approval of an application for premarket approval for surgical mesh for transvaginal POP repair and, if this proposed order is finalized, we will make the language in § 884.5980 consistent with the final version of this proposed order.

XII. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

XIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. ''FDA Public Health Notification: Serious Complications Associated With Transvaginal Placement of Surgical Mesh in Repair of Pelvic Organ Prolapse and Stress Urinary Incontinence'', October 20, 2008, available at *http://www.fda.gov/MedicalDevices/Safety/AlertsandNotices/PublicHealthNotifications/ucm061976.htm.*
2. ''FDA Safety Communication: UPDATE on Serious Complications Associated With Transvaginal Placement of Surgical Mesh for Pelvic Organ Prolapse,'' July 13, 2011, available at *http://www.fda.gov/MedicalDevices/Safety/AlertsandNotices/ucm262435.htm.*
3. ''FDA Executive Summary: Surgical Mesh for Treatment of Women With Pelvic Organ Prolapse and Stress Urinary Incontinence, Obstetrics & Gynecological Devices Advisory Committee Meeting'', September 8–9, 2011, available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/ObstetricsandGynecologyDevices/ucm262488.htm.*
4. FDA Meeting of the Obstetrics & Gynecological Devices Panel, September 8–9, 2011, available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/ObstetricsandGynecologyDevices/ucm262488.htm.*
5. Blue Book Memo #G–95–1 ''Use of International Standard ISO–10993, Biological Evaluation of Medical Devices Part 1: Evaluation and Testing,'' May 1, 1995, available at: *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm080735.htm.*

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add paragraph (c) to § 884.5980, Subpart F, to read as follows:

§ 884.5980 Surgical mesh for transvaginal pelvic organ prolapse repair.

* * * * *

(c) *Date premarket application approval or notice of completion of a product development protocol is required.* A premarket application approval or notice of completion of a product development protocol for a device is required to be filed with the Food and Drug Administration on or before [90 DAYS AFTER DATE OF PUBLICATION OF FINAL ORDER FOR PREMARKET APPLICATION OR 30 MONTHS AFTER DATE OF PUBLICATION OF FINAL ORDER RECLASSIFYING INTO CLASS III, WHICHEVER IS LATER], for any surgical mesh described in paragraph (a) of this section that was in commercial distribution before May 28, 1976, or that has, on or before [90 DAYS AFTER DATE OF PUBLICATION OF FINAL ORDER FOR PREMARKET APPROVAL APPLICATIONS OR 30 MONTHS AFTER DATE OF PUBLICATION OF FINAL ORDER RECLASSIFYING INTO CLASS III, WHICHEVER IS LATER] been found substantially equivalent to a surgical mesh described in paragraph (a) of this section that was in commercial distribution before May 28, 1976. Any other surgical mesh intended for transvaginal pelvic organ prolapse repair shall have an approved premarket application or declared completed product development protocol in effect before being placed in commercial distribution.

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09909 Filed 4–29–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

[Docket ID: BIA 2014–0002; K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113]

RIN 1076–AF23

Land Acquisitions in the State of Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would delete a provision in the Department of the Interior's land-into-trust regulations that excludes from the scope of the regulations, with one exception, land acquisitions in trust in the State of Alaska.

DATES: Comments on this proposed rule must be received by June 30, 2014. *Comments on the information collections contained in this proposed regulation are separate from those on the substance of the rule.* Comments on the information collection burden should be received by June 2, 2014 to ensure consideration, but must be received no later than June 30, 2014.

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

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2014–0002.
—*Email: consultation@bia.gov.* Include the number 1076–AF23 in the subject line of the message.
—*Mail:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240. Include the number 1076–AF23 in the submission.
—*Hand delivery:* Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240. Include the number 1076–AF23 in the submission.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

Comments on the information collections contained in this proposed regulation are separate from those on the substance of the rule. Send comments on the information collection burden to OMB by facsimile to (202) 395–5806 or email to the OMB Desk Officer for the Department of the Interior at *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Rule

Section 5 of the Indian Reorganization Act (IRA), as amended, authorizes the Secretary of the Interior (Secretary) to acquire land in trust for individual Indians and Indian tribes in the continental United States and Alaska. 25 U.S.C. 465; 25 U.S.C. 473a. For several decades, the Department's regulations at 25 CFR part 151, which establish the process for taking land into trust, have included a provision stating that the regulations in part 151 do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or its members (the ''Alaska Exception''). 25 CFR 151.1. This rule would delete the Alaska Exception, thereby allowing applications for land to be taken into trust in Alaska to proceed under part 151. The decision to take land into trust is a decision made on a case-by-case basis. Thus, even with the deletion, the Department would retain its usual discretion to grant or deny land-into-trust applications.

II. Background and Explanation

The Alaska Exception in 25 CFR 151.1 was promulgated in 1980, and it has remained the subject of debate since its creation. A number of recent actions, including a pending lawsuit, have caused the Department to look carefully at this issue again. Upon careful review, the Department proposes removal of the Alaska Exception. The acquisition of land in trust is one of the most significant functions that this Department undertakes on behalf of Indian tribes. Placing land into trust secures tribal homelands, which in turn advances economic development, promotes the health and welfare of tribal communities, and helps to protect tribal culture and traditional ways of life. These benefits of taking land into trust are equally as important to federally recognized Alaska Natives as well, and elimination of the Alaska Exception is thus important and warranted.

History of the Alaska Exclusion and Its Interpretation

The Alaska Exception was promulgated as part of the Department's land-into-trust regulations in 1980, but a brief historical overview of the United States' laws and policies governing the land claims of Alaska Natives is helpful to put its meaning into context.

Although the United States acquired Alaska from Russia in 1867, 15 Stat. 539, the aboriginal land claims of Alaska Natives remained largely unresolved for more than a century. A reservation was established by Congress in 1891 for the Metlakatla Indians, who had recently moved to Alaska from British Columbia. *See Metlakatla Indians* v. *Egan,* 369 U.S. 45, 48 (1962). Other reserves for Alaska Natives were established by executive order, as authorized by the IRA, 49 Stat. 1250 c. 254, section 2 May 1, 1936 (repealed). *See Cohen's Handbook of Federal Indian Law* section 4.07[3][b][iii], at 337–38 (Nell Jessup Newton ed., 2012) (discussing the history of reservation policy in Alaska). Congress made provision for individual Alaska Natives to acquire title to land through the Alaska Native Allotment Act of May 17, 1906, 34. Stat. 197, as amended, 43 U.S.C. 270–1 *et seq.* (repealed 1976), and the Alaska Native Townsite Act, Act of May 25, 1926, Ch. 379, 44 Stat. 629, as amended, 43 U.S.C. 733 *et seq.* (repealed 1976). The title that Alaska Natives received under these statutes was not held in trust but was subject to restrictions on alienation. *United States* v. *Atlantic Richfield Co.,* 435 F. Supp. 1009, 1015 (D. Alaska 1977), *aff'd* 612 F.2d 1132 (9th Cir. 1980).

In 1934, Congress enacted the IRA to ''establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically.'' *Morton v. Mancari,* 417 U.S. 535, 542 (1974). Section 5 of the IRA, described as the ''capstone'' of the land-related provisions in the IRA, authorizes the Secretary, in her discretion, to acquire land in trust on behalf of Indian tribes or individual Indians. 25 U.S.C. 465; *Cohen's Handbook of Federal Indian Law* section 15.07[1][a], at 1040. Section 5 was not among the provisions of the IRA, as originally enacted, that applied in Alaska. Two years later, however, Congress expressly extended this provision to the Territory of Alaska. Act of May 1, 1936, Public Law 74–538, section 1, 49 Stat. 1250 (codified at 25 U.S.C. 473a). The 1936 Act also authorized the Secretary to designate reservations on certain Alaska lands, *id.* section 2, 49 Stat. 1250–51, and seven reservations were established under that authority, *see Cohen's Handbook of Federal Indian Law* section 4.07[3][b][iii], at 338.

In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203, 85 Stat. 688 (codified as amended at 43 U.S.C. 1601 *et seq.*), ''a comprehensive statute designed to settle all land claims by Alaska Natives.'' *Alaska v. Native Village of Venetie Tribal Government,* 522 U.S. 520, 523 (1998). The Act revoked all but one of the existing Native reserves, repealed the authority for new allotment applications, and set forth a broad declaration of policy to settle land claims. *See* 43 U.S.C. 1618(a), 1617(d) and 1601(b). It did not, however, revoke the Secretary's authority, under Section 5 of the IRA, to take Alaska land in trust for Alaska Natives.

Notwithstanding the law's failure to withdraw authority previously given by Congress to the Secretary, the passage of ANCSA sparked discussion as to the continued wisdom of using Section 5 of the IRA to acquire land in trust for Alaska Natives. The debate became focused in the mid-1970s when the Native Village of Venetie Tribal Government requested that the lands of

its former reserve, which had been revoked by ANCSA and conveyed to ANCSA village corporations in fee simple, be taken back into trust status. In a 1978 opinion, the then-Associate Solicitor for Indian Affairs concluded that in enacting ANCSA, Congress had evinced an ''unmistakable'' intent to ''permanently remove all Native lands in Alaska from trust status.'' ''Trust Land for the Natives of Venetie and Arctic Village,'' Memorandum to Assistant Secretary—Indian Affairs from Associate Solicitor—Indian Affairs, Thomas W. Fredericks, at 1 (Sept. 15, 1978). The memorandum determined that ''it would . . . be an abuse of the Secretary's discretion to attempt to use Section 5 of the IRA . . . to restore the former Venetie Reserve to trust status.'' *Id.* at 3. The memorandum concluded that Congress in ANCSA intended not to create a trusteeship or a reservation system, and therefore, it would be an abuse of discretion for the Secretary to acquire lands in trust in Alaska. *Id.*

A few months before the 1978 legal opinion was issued, the Secretary proposed a regulation to govern the taking of land into trust. The proposed rule made no special mention of Alaska. *See* 43 FR 32311 (July 19, 1978). However, when the final regulation was published in 1980, it contained the Alaska Exception found in 25 CFR 151.1. The preamble explained the change by relying on the same rationale used in the 1978 Opinion, stating that during the notice-and-comment period, ''[i]t was . . . pointed out that the Alaska Native Claims Settlement Act does not contemplate the further acquisition of land in trust status, or the holding of land in such status, in the State of Alaska, with the exception of acquisitions for the Metlakatla Indian Community.'' 45 FR 62034 (Sept. 18, 1980). Consequently, a sentence was added ''to specify that the regulations do not apply, except for Metlakatla, in the State of Alaska.'' *Id.*

In 1995, the Department invited public comment on a petition by three Native groups in Alaska requesting the Department to initiate a rulemaking that would remove the prohibition in the regulations on taking Alaska land in trust. *See* 60 FR 1956 (Jan. 5, 1995). Later, in 1999, the Department issued a proposed rule to amend the land into trust regulations. 64 FR 17574 (Apr. 12, 1999). Although the proposed rule retained the bar on taking land into trust in Alaska, *id.* at 17578, the Department recognized that the Alaska Exception was ''predicated'' on the 1978 legal opinion and stated that ''[a]lthough that opinion has not been withdrawn or overruled, we recognize that there is a credible legal argument that ANCSA did not supersede the Secretary's authority to take land into trust in Alaska under the IRA.'' *Id.* at 17577–78 . Accordingly, the Department invited ''comment on the continued validity of the Associate Solicitor's opinion and issues raised by the petition noticed at 60 FR 1956 (1995).'' *Id.* at 17578.

In 2001, after due consideration of comments and legal arguments submitted by Alaska Native governments and groups and by the State of Alaska and two leaders of the Alaska State Legislature on whether the 1978 Opinion accurately stated the law, *see* 66 FR 3452, 3454 (Jan. 16, 2001), the Solicitor concluded that there was ''substantial doubt about the validity of the conclusion reached in the 1978 Opinion'' and rescinded it. ''Rescinding the September 15, 1978, Opinion of the Associate Solicitor for Indian Affairs entitled 'Trust Land for the Natives of Venetie and Arctic Village,' '' Memorandum to Assistant Secretary—Indian Affairs from Solicitor John D. Leshy, at 1 (Jan. 16, 2001). The Solicitor's memorandum observed that ''[t]he 1978 Opinion gave little weight to the fact that Congress had not repealed section 5 of the IRA, which is the generic authority by which the Secretary takes Indian land into trust, and which Congress expressly extended to Alaska in 1936.'' *Id.* The Solicitor explained that the rescission of the 1978 Opinion was made ''so as not to encumber future discussions over whether the Secretary can, as a matter of law, and should, as a matter of policy, consider taking Native land in Alaska into trust.'' *Id.* at 2.

The Solicitor's rescission of the 1978 Opinion was made at the same time as the issuance of a final rule amending the part 151 regulations. This 2001 final rule discussed the rescission of the 1978 opinion but nevertheless maintained the existing bar on acquiring land in trust in Alaska. 66 FR 3452, 3454 (Jan. 16, 2001). The preamble to the 2001 final rule explained the retention of the Alaska Exception by stating that ''the position of the Department has long been, as a matter of law and policy, that Alaska Native lands ought not to be taken in trust.'' *Id.*

But consistent with the 2001 Solicitor's Opinion questioning the validity of the legal underpinnings of the policy, the Department further provided that the amended regulation ''ought to remain in place for a period of three years during which time the Department will consider the legal and policy issues involved in determining whether the Department ought to remove the prohibition on taking Alaska lands into trust. If the Department determines that the prohibition on taking lands into trust in Alaska should be lifted, notice and comment will be provided.'' *Id.* However, later that year, the Department withdrew the entire final rule that would have revised the part 151 regulations. 66 FR 56608, 56609 (Nov. 9, 2001). Thus, the original Alaska Exception has remained in the part 151 regulations.

In 2007, four tribes of Alaska Natives and one individual Alaska Native challenged the Alaska exception in the United States District Court for the District of Columbia. *Akiachak Native Cmty.* v. *Salazar,* 935 F. Supp. 2d 195, 197 (D.D.C. 2013). During the course of the litigation, the Department clarified its legal position on the effect of ANCSA, informing the Court in 2008 that neither ANCSA nor the Federal Land Policy and Management Act has ''removed the Secretary's discretionary authority to take Indian lands into trust status in the State of Alaska.'' Defendants' Reply Brief, at 1–2 (July 25, 2008). The Department reiterated this position in a court-ordered filing in 2012, informing the Court that ''the Secretary has both the authority and discretion to take lands within the State of Alaska into trust for Natives, even though he is not legally obligated to do so.'' Defendants' Supplemental Brief Pursuant to Court Order, at 10 (July 6, 2012).

On March 31, 2013, the district court granted summary judgment in favor of the plaintiffs. *Akiachak,* 935 F. Supp. at 197. Consistent with the Department's position on the issue, the court held that ''ANCSA left intact the Secretary's authority to take land into trust throughout Alaska'' and that ''Congress did not explicitly eliminate the grant of authority.'' *Id.* at 207–08. The court rejected the argument by Alaska, which had intervened in the case, that ANCSA impliedly repealed the 1936 amendment that authorized the acquisition of land in trust in Alaska under Section 5 of the IRA. *See id.* at 204–05. The court distinguished the settlement of ''claims'' in ANCSA, which are an assertion of a legal right, from petitions to acquire land into trust, which lies within the Secretary's discretion. *See id.* at 205–06. The court also noted that Congress expressly repealed the Alaska Native Allotment Act in ANCSA and subsequently repealed the Alaska Native Townsite Act and section 2 of the 1936 Act, and thus understood how to repeal prior enactments, but left Section 5 of the IRA alone. *See id.* at 205, 207. Lastly, the court found no ''irreconcilable conflict'' between the Secretary's discretionary authority to

create new trust land and ANCSA, particularly given that while the settlement in ANCSA did not create a trusteeship, it did ''not necessarily mean that it prohibits the creation of any trusteeship outside of the settlement.'' *Id.* at 207.

In addition, contrary to the Department's litigating position in defense of the regulation, the district court found that the Alaska Exception was unlawful because it violates 25 U.S.C. 476(g), one of two ''privileges and immunities'' provisions added by the 1994 Amendment to the IRA. *See id.* at 208–11. The district court concluded that in providing that the Department will not consider the petitions of Alaska Natives to have land taken into trust, the Alaska Exception impermissibly diminishes their privileges ''relative to the privileges . . . available to all other federally recognized tribes by virtue of their status as Indian tribes.'' *Id.* at 210–11.

In a subsequent decision addressing how to remedy this violation, the district court concluded that the Alaska Exception was severable from the rest of the Department's land-into-trust regulations and accordingly vacated and severed the final sentence of 25 CFR 151.1. *See Akiachak Native Cmty.* v. *Jewell,* 2013 U.S. Dist. LEXIS 141120 (D.D.C. 2013) at *10–*16. That case is currently pending on appeal.

Reasons for Eliminating the Alaska Exception

As the foregoing overview of the development, interpretation, and litigation of the Alaska Exception demonstrates, the Department has ongoing statutory authority to take land into trust in Alaska under Section 5 of the IRA. This authority, explicitly granted by Congress, has never been revoked. Subsequent enactment of ANCSA and the Federal Land Policy and Management Act (FLPMA) have provided additional context for the exercise of such authority, but no legal impediment exists to deleting the Alaska Exception from the land-into-trust regulations. The U.S. District Court for the District of Columbia recently came to the same conclusion concerning the effect of ANCSA and FLPMA.

The categorical exclusion of Alaska from the regulations is particularly unwarranted because, as discussed earlier, it was added to the regulations based on a mistaken legal interpretation of ANCSA, not because of public policy concerns. Congressional policy has remained consistent since 1934 with the enactment of Section 5 of the IRA. By providing authority to take land into trust—an authority that was not revoked by ANCSA—Congress recognized that restoring tribal lands to trust status was important to tribal self-governance by providing a physical space where tribal governments may exercise sovereign powers to provide for their citizens. Restoring tribal homelands also supports the Federal trust responsibility to Indian nations because it supports the ability of tribal governments to provide for their people, thus making them more self-sufficient. Therefore, given that the authority in Section 5 remains intact for lands in Alaska, it is unnecessary and inappropriate to categorically exclude all Alaska lands from the land-into-trust regulations. Rather, the Department can and should make case-by-case determinations as to whether to take land into trust in Alaska in response to specific requests to do so.

This proposed case-by-case determination is also consistent with the Department's initiative of acquiring trust land on behalf of federally recognized Indian tribes throughout the country. This initiative was first formally announced by Secretary Ken Salazar in a June 18, 2010 Memorandum to the Assistant Secretary, ''Processing Land-Into-Trust Applications for Applications Not Related to Gaming,'' *available at http://www.indianaffairs.gov/idc/groups/public/documents/text/idc009901.pdf.* In the memorandum, the Secretary emphasized that ''[t]aking land into trust is one of the most important functions that this Department undertakes on behalf of Indian tribes.'' *Id.* at 1. He added that ''[o]ngoing activities to establish, consolidate and, where appropriate, expand tribal homelands is an essential feature of our Nation's Indian policy and honoring of principles of tribal self-reliance and self-governance.'' *Id.* Most recently, Secretary Sally Jewell reaffirmed this initiative at the Tribal Nations Conference on November 13, 2013. *See* U.S. Dep't of the Interior, Press Release, 2013 White House Tribal Nations Conference: Promoting Prosperous, Resilient Tribal Nations (Nov. 14, 2013), *available at http://www.doi.gov/news/blog/2013-white-house-tribal-nations-conference-promoting-prosperous-resilient-tribal-nations.cfm.* As part of this initiative, the Department believes that it is important to allow Alaska Native tribes to present land into trust applications.

Recent blue ribbon commissions have emphasized the need for the Department to be able to take land into trust in Alaska. In November of 2013, the Indian Law and Order Commission, a bi-partisan commission established by Congress to investigate criminal justice systems in Indian Country, expressly stated that ''a number of strong arguments can be made that [Alaska fee] land may be taken into trust and treated as Indian country'' and ''[n]othing in ANCSA expressly barred the treatment of these former [Alaska] reservation and other Tribal fee lands as Indian country.'' Indian Law and Order Comm'n, ''A Roadmap For Making Native America Safer: Report to the President and Congress of the United States,'' at 45, 52 (Nov. 2013). The Commission recommended allowing lands to be placed in trust for Alaska Natives. *See id.* at 51–55. The basic thrust of the Indian Law and Order Commission's recommendation is that the state of public safety for Alaska Natives, especially for Native women who suffer high rates of domestic abuse, sexual violence and other offenses, is unacceptable; providing trust lands in Alaska in appropriate circumstances would provide additional authority for Native governments to be better partners with the State of Alaska to address these problems. In sum, the Commission concludes that trust land in Alaska could help improve the lives of Indian people by creating safer communities.

In December of 2013, the Secretarial Commission on Indian Trust Administration and Reform, established by former Secretary of the Interior Ken Salazar, endorsed these findings and likewise recommended allowing Alaska Native tribes to have tribally owned fee simple land taken into trust. U.S. Dep't of the Interior, ''Report of the Commission on Indian Trust Administration and Reform,'' at 65–67 (Dec. 10, 2013). This Commission was motivated by many of the same objectives that motivated the Indian Law and Order Commission; it recommended allowing land owned in fee simple by Alaska Native Tribes to be placed into trust.

In addition to these recommendations, we believe that facts have developed in Alaska that warrant reconsideration of our policy. For more than 25 years, Alaska Native Tribal governments have been at the forefront of Federal policies supporting tribal self-determination and self-governance. The tribal governments in Alaska have made tremendous use of various Federal self-governance policies, thereby increasing self-sufficiency and better quality of life for Alaska Natives. For example, Alaska Native Tribal Governments have a strong record, across a range of programs, of implementing Federal programs thoughtfully and cooperatively, often through consortia.

For all the reasons mentioned above, the Department reconsiders its past approach barring land into trust in Alaska and proposes to amend its regulations by removing the Alaska Exception. Specifically, the Department proposes to eliminate the final sentence in 25 CFR 151.1, which provides that part 151 does not cover the acquisition of land in trust status in the State of Alaska. Deletion of the Alaska Exception would resolve any uncertainty regarding the Department's regulatory authority to take land into trust in Alaska, and would allow for the submission and review of applications.

Applying the part 151 procedures to lands in Alaska would not require the Department to approve applications for trust acquisitions in Alaska. The Secretary would retain full discretion to analyze and determine whether to approve any particular trust application, and such a determination would include consideration of the substantive criteria enumerated in part 151.The Department recognizes, however, that applying those factors in Alaska requires the consideration of unique aspects of Native Alaska Villages and Native land tenure in Alaska, such as the ANCSA-created ownership and governance of land by Regional and Village Corporations. Accordingly, before applying the part 151 procedures in Alaska, the Department intends to engage in further government-to-government consultations on how those procedures are best applied in Alaska. The Department also solicits comments on that issue as part of this rule making.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to acquisitions of Indian land.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule has no 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.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' E.O. 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. During development of this proposed rule, the Department discussed this topic with tribal leaders, and will further consult specifically on the proposed rule during the public comment period.

I. Paperwork Reduction Act

OMB Control Number: 1076–0100.

Title: Acquisition of Trust Land.

Brief Description of Collection: This information collection requires tribes and individual Indians seeking to have land taken into trust status to provide certain information. No specific form is used but respondents supply information so that the Secretary may make an evaluation and determination in accordance with established Federal factors, rules, and policies.

Type of Review: Revision of currently approved collection.

Respondents: Indian tribes and individuals.

Number of Respondents: 1,060 on average (each year).

Number of Responses: 1,060 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: (See table below).

Estimated Total Annual Hour Burden: 74,400 hours.

Citation 25 CFR 151	Information	Average number of hours	Average number per year	Estimated annual burden hours
151.9, 151.10 (On-Res), and 151.13.	Application	50	850	42,500
	Documentation for NEPA—tribe and individual furnish documentation.	40	120	4,800
	Documentation for NEPA—Tiering	20	200	4,000
151.9, 151.11 (Off-Res), and 151.13.	Application	70	210	14,700
	Documentation for NEPA—tribe provides documentation	40	210	8,400

OMB Control No. 1076–0100 currently authorizes the collections of information contained in 25 CFR part 151. If this proposed rule is finalized, the annual burden hours for respondents (entities petitioning for Federal acknowledgment) will increase by approximately 6,600 hours because of the increase in potential respondents.

You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB. We invite comments on the information collection requirements in the proposed rule. You may submit comments to OMB by facsimile to (202) 395–5806 or you may send an email to the attention of the OMB Desk Officer for the Department of the Interior: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. *Note that the request for comments on the rule and the request for comments on the information collection are separate.* To best ensure consideration of your comments on the information collection, we encourage you to submit them by June 2, 2014; while OMB has 60 days from the date of publication to act on the information collection request, OMB may choose to act on or after 30 days. Comments on the information collection should address: (a) the necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology. Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 151

Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend part 151 in Title 25 of the Code of Federal Regulations as follows:

PART 151—LAND ACQUISITIONS

■ 1. The authority citation for part 151 continues to read as follows:

Authority: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

■ 2. Revise § 151.1 to read as follows:

§ 151.1 Purpose and Scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations.

Dated: April 21, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–09818 Filed 4–30–14; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0281]

RIN 1625–AA09

Drawbridge Operation Regulation; Oceanport Creek, Oceanport, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the New Jersey Transit Rail Operations (NJTRO) Bridge across Oceanport Creek at mile 8.4, at Oceanport, New Jersey. The bridge owner submitted a request to allow the bridge to require a four hour advance notice for bridge openings year-round based upon infrequent requests to open the draw during past years. It is expected that this proposed change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before June 30, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0281 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Joe Arca, Project Officer, First Coast Guard District Bridge Program, telephone 212–668–7165, email *joe.m.arca@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Tables of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2014–0281), 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 (*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 *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, 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 phone 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*, type the docket number USCG–2014–0281 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them 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 the rule based on your comments.

2. 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*, type the docket number (USCG–2014–0281) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit either 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.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one 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**.

B. Basis and Purpose

The New Jersey Transit Rail Operations (NJTRO) Bridge across Oceanport Creek at mile 8.4, at Oceanport, New Jersey, has a vertical clearance of 4 feet at mean high water and 6 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.736.

The waterway users are seasonal recreational vessels.

The owner of the bridge, New Jersey Transit Rail Operations (NJTRO), submitted a request to the Coast Guard to change the drawbridge operating regulations that presently require the bridge to open on signal from May 15 through September 15, between 5 a.m. and 9 p.m.; except that, the draw need not open 6 a.m. to 7:45 a.m., and 5:30 p.m. to 7:30 p.m., on weekdays, excluding all Federal holidays except for Martin Luther King Day. The draw must open on signal upon four hours notice from May 15 through September

15, between 9 p.m. and 5 a.m., and from September 16 through May 14; except that, the draw need not be opened from 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays, excluding all Federal holidays except for Martin Luther King Day. Public vessels of the United States must be passed as soon as possible at anytime.

Under this proposed rule the bridge would open year-round on signal if at least a four-hour advance notice is given; except that, the draw need not open weekdays between 6 a.m. and 7:45 a.m. and between 5:30 p.m. and 7:30 p.m., excluding Federal holidays.

C. Discussion of Proposed Rule

The Coast Guard proposes to change the drawbridge operation regulations at 33 CFR 117.736 that would allow the NJTRO Bridge across Oceanport Creek at mile 8.4, to open on signal after at least a four hour advance notice is given. The existing rush hour weekday closed periods between 6 a.m. and 7:45 a.m. and between 5:30 p.m. and 7:30 p.m.; except Federal holidays would remain unchanged by this notice of proposed rulemaking.

There were only eight requests to open the NJTRO Bridge during the past three years. As a result of the infrequent number of requests to open the bridge the Coast Guard believes that allowing the bridge to require a four-hour advance notice for bridge openings is reasonable.

The need to keep the draw from opening weekdays during the commuter rail rush hour periods is still necessary and will remain unchanged by this rule.

The exclusion of Martin Luther King Day from the Federal holiday exclusion in the existing regulation will be changed. All Federal holidays will be exempt from the rush hour closure periods.

The requirement to open the bridge as soon as possible for public vessels of the United States will be removed from this rulemaking because it is now listed under 33 CFR 117.31, of this chapter.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed 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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866, or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We believe that this rulemaking is not a significant regulatory action because the bridge will still open for all vessel traffic at all times provided the four-hour advance notice is given.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons: The NJTRO Bridge will open on signal at all times provided at least a four-hour advance notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This proposed rule would 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.

9. Civil Justice Reform

This proposed 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.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rulemaking and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rulemaking is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this proposed rule. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

E. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise 33 CFR 117.736 to read as follows:

§ 117.736 Oceanport Creek.

The draw of the New Jersey Transit Rail Operations (NJTRO) Bridge at mile 8.4, near Oceanport, shall open on signal provided at least a four-hour advance notice is given by calling the number posted at the bridge. The draw need not open for the passage of vessel traffic Monday through Friday, except Federal Holidays, between 6 a.m. and 7:45 a.m. and between 5:30 p.m. and 7:30 p.m.

Dated: 17 April 2014.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2014–10001 Filed 4–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0081]

RIN 1625–AA00

Safety Zones; Annual Events in the Captain of the Port Zone Buffalo

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to amend its safety zones regulations for annually reoccurring firework displays and marine events within the Captain of the Port Zone Buffalo. The safety zones that would be amended or established by this proposed rulemaking are necessary to protect the surrounding public, spectators, participants, and vessels from the hazards associated with fireworks displays, hydroplane boat races, and other events of a similar nature posing a potential hazard to the safety of life and property on the navigable waters. This proposed rule is intended to restrict vessels from designated areas on navigable waterways during these events.

DATES: Comments and related materials must be received by the Coast Guard on or before June 2, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2014–0081 using any one of the following methods:

(1) *Federal 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) *Delivery:* At the 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NAD 83 North American Datum of 1983
Section

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2014–0081), 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 at *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, it will be considered received by the Coast Guard when the comment is successfully transmitted. If you fax, hand deliver, or mail your comment, it will be considered received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and 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,* type the docket number [USCG–2014–0081] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this notice of proposed rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. 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,* type the docket number (USCG–2014–0081) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under **ADDRESSES**. Please explain why you believe 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**.

B. Regulatory History and Information

The regulations found in 33 CFR 165.939 serve to protect the boating public from hazards associated with firework displays that take place on a navigable waterway within the Captain of the Port (COTP) Zone Buffalo. For boundaries of this COTP zone, see 33 CFR 3.45–10. In 2013, the Captain of the Port Buffalo amended the regulations found in 33 CFR 165.939 through a final rule published April 23, 2013 (78 FR 23850). Those revisions clarified the locations of many outdated safety zones and established seven additional safety zones within the Captain of the Port Zone Buffalo area of responsibility.

C. Basis and Purpose

Section 165.939 currently lists 29 permanent safety zones within the Captain of the Port Zone Buffalo. Each of these 29 safety zones corresponds to an annually recurring fireworks display.

After the recent 2013 summer season it was noted the effective times and dates published for these events were not always rigidly adhered to by fireworks sponsors and event organizers and thus a subsequent regulatory update enacting greater regulatory flexibility for enforcement notification was desired in order to maximize Coast Guard efficiency and public safety. Also, the COTP Buffalo has decided to propose safety zones for one additional firework display and five additional marine events.

With the above findings in mind, the Coast Guard proposes to amend 33 CFR 165.939 to revise the enforcement period and include several non-fireworks events.

The Captain of the Port Buffalo has determined that these events present significant hazards to public spectators and participants. Such hazards include premature detonations, dangerous detonations, dangerous projectiles, falling or burning debris, vessels of unique design operating at great speed, and large numbers of competitive swimmers.

D. Discussion of Proposed Rule

For all of the above reasons, the Captain of the Port Sector Buffalo proposes to revise 33 CFR 165.939. This revision would amend the verbiage on the enforcement period for all 29 safety zones currently listed and establish six additional safety zones in § 165.939. These new safety zones would be added as paragraphs (30) Thunder on the Niagara Hydroplane boat races, North Tonawanda, NY; (31) Antique Boat Show Hydroplane boat races, Grand Island, NY; (32) D-Day Conneaut Air show, Conneaut, OH; (33) Bay Swim, Erie, PA; (34) Rover Fest fireworks display, Cleveland, OH; and (35) Cleveland National Air show, Cleveland, OH. Although this proposed rule would remain in effect throughout the year, the safety zones within it will be enforced only before and during each corresponding event.

The Captain of the Port will use all appropriate means to notify the public when the zones in this proposal will be enforced. Consistent with 33 CFR 165.7(a), such means will include, among other things, publication in the **Federal Register** and Broadcast Notice to Mariners.

Entry into, transiting, or anchoring within the proposed safety zones would be prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed 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, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones contained in this proposed rule will be relatively small and enforced for relatively short time. Also, the proposed safety zones are designed to minimize their impact on navigable waters. Furthermore, the

proposed safety zones have been designed to allow vessels to transit around them. Thus, restrictions on vessel movement within a particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in any one of the proposed safety zones while these zones are being enforced. These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Each safety zone in this proposed rule will be in enforced for no more than 10 hours in any 24-hour period with the majority of zones only being in enforced for a few hours in any 24 hour period. Each of the safety zones will be enforced only once per year and will be in areas with low commercial vessel traffic. Furthermore, these safety zones have been designed to allow traffic to pass safely around each zone. In the event that a safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Buffalo or his or her designated representative to transit the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This proposed rule would 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.

9. Civil Justice Reform

This proposed 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.

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded, under figure 2–1, paragraph (34) (g), of the Commandant Instruction because it involves the establishment of a safety zone.

A preliminary environmental analysis checklist and a preliminary categorical exclusion determination are available in

the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 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. Chapters 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. Revise § 165.939 to read as follows:

§ 165.939 Safety Zones; Annual Events in the Captain of the Port Buffalo Zone.

(a) *Safety Zones.* The following are designated as safety zones. The enforcement dates and times for each of the safety zones listed in this section are subject to change, but the duration of enforcement would remain the same or nearly the same as the total number of hours as published. In the event of a change, the Captain of the Port Sector Buffalo will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariners.

(1) *Boldt Castle 4th of July Fireworks, Heart Island, NY.* (i) *Location.* All U.S. waters of the Saint Lawrence River within a 1,120 foot radius of land position 44°20′38.5″ N, 075°55′19.1″ W (NAD 83) at Heart Island, NY.

(ii) *Enforcement period.* July 4 from 8:30 p.m. to 10:30 p.m. each year.

(2) *Clayton Chamber of Commerce Fireworks, Calumet Island, NY.* (i) *Location.* All U.S. waters of the Saint Lawrence River within an 840 foot radius of land position 44°15′04″ N, 076°05′40″ W (NAD 83) at Calumet Island, NY.

(ii) *Enforcement period.* July 3 from 9 p.m. to 11:30 p.m. of each year.

(3) *French Festival Fireworks, Cape Vincent, NY.* (i) *Location.* All U.S. waters of the Saint Lawrence River within an 840 foot radius of land position 44°07′54.6″ N, 076°20′01.3″ W (NAD 83) in Cape Vincent, NY.

(ii) *Enforcement period.* The second weekend of July from 9:15 p.m. to 11 p.m. each year.

(4) *Lyme Community Days, Chaumont, NY.* (i) *Location.* All U.S. waters of Chaumont Bay within a 560 foot radius of position 44°04′06.3″ N, 076°08′56.8″ W (NAD 83) in Chaumont, NY.

(ii) *Enforcement period.* The fourth weekend of July from 8:30 p.m. to 11 p.m. each year.

(5) *Village Fireworks, Sackets Harbor, NY.* (i) *Location.* All U.S. waters of Black River Bay within an 840 foot radius of position 43°56′51.9″ N, 076°0746.9″ W (NAD 83) in Sackets Harbor, NY.

(ii) *Enforcement period.* July 4 from 8:30 p.m. to 10:30 p.m. each year.

(6) *Can-Am Festival, Sackets Harbor, NY.* (i) *Location.* All U.S. waters of Black River Bay within a 1,120 foot radius of position 43°57′15.9″ N, 076°06′39.2″ W (NAD 83) in Sackets Harbor, NY.

(ii) *Enforcement period.* The third weekend of July from 9 p.m. to 10:45 p.m. each year.

(7) *Oswego Harborfest, Oswego, NY.* (i) *Location.* All U.S. waters of Lake Ontario within a 1,000 foot radius of position 43°28′10″ N, 076°31′04″ W (NAD 83) in Oswego, NY.

(ii) *Enforcement period.* The last Saturday of July from 9 to 10:30 p.m. each year.

(8) *Brewerton Fireworks, Brewerton, NY.* (i) *Location.* All U.S. waters of Lake Oneida within an 840 foot radius of barge position 43°14′16.4″ N, 076°08′03.6″ W (NAD 83) in Brewerton, NY.

(ii) *Enforcement period.* July 3 from 9 p.m. to 10:30 p.m. each year.

(9) *Celebrate Baldwinsville Fireworks, Baldwinsville, NY.* (i) *Location.* All U.S. waters of the Seneca River within a 700 foot radius of land position 43°09′24.9″ N, 076°20′18.9″ W (NAD 83) in Baldwinsville, NY.

(ii) *Enforcement period.* The first weekend of July from 9 p.m. to 11 p.m. each year.

(10) *Island Festival Fireworks, Baldwinsville, NY.* (i) *Location.* All U.S. waters of the Seneca River within a 1,120 foot radius of land position 43°09′22″ N, 076°20′15″ W (NAD 83) in Baldwinsville, NY.

(ii) *Enforcement period.* The first weekend of July from 9:30 p.m. to 11 p.m. each year.

(11) *Seneca River Days, Baldwinsville, NY.* (i) *Location.* All U.S. waters of the Seneca River within an 840 foot radius of land position 43°09′25″ N, 076°20′21″ W (NAD 83) in Baldwinsville, NY.

(ii) *Enforcement period.* The second weekend of July from 9 p.m. to 10:30 p.m. each year.

(12) *City of Syracuse Fireworks Celebration, Syracuse, NY.* (i) *Location.* All U.S. waters of Onondaga Lake within a 350 foot radius of land position 43°03′37″ N, 076°09′59″ W (NAD 83) in Syracuse, NY.

(ii) *Enforcement period.* The last weekend of June from 9:30 p.m. to 10:30 p.m. each year.

(13) *Tom Graves Memorial Fireworks, Port Bay, NY.* (i) *Location.* All U.S. waters of Port Bay within an 840 foot radius of barge position 43°18′14.8″ N, 076°50′17.3″ W (NAD 83) in Port Bay, NY.

(ii) *Enforcement period.* July 3 from 9 p.m. to 10:30 p.m. of each year.

(14) *Village Fireworks, Sodus Point, NY.* (i) *Location.* All U.S. waters of Sodus Bay within a 1,120 foot radius of land position 43°16′28.7″ N, 076°58′27.5″ W (NAD 83) in Sodus Point, NY.

(ii) *Enforcement period.* July 3 from 9:30 p.m. to 10:30 p.m. each year.

(15) *Rochester Harbor and Carousel Festival, Rochester, NY.* (i) *Location.* All U.S. waters of Lake Ontario within a 1,120 foot radius of land position 43°15′40.2″ N, 077°36′05.1″ W (NAD 83) in Rochester, NY.

(ii) *Enforcement period.* The fourth Monday of June from 8 p.m. to 10 p.m. each year.

(16) *A Salute to our Heroes, Hamlin Beach State Park, NY.* (i) *Location.* All U.S. waters of Lake Ontario within a 560 foot radius of land position 43°21′51.9″ N, 077°56′59.6″ W (NAD 83) in Hamlin, NY.

(ii) *Enforcement period.* The first weekend of July from 9:45 p.m. to 11:30 p.m. each year.

(17) *Olcott Fireworks, Olcott, NY.* (i) *Location.* All U.S. waters of Lake Ontario within a 1,120 foot radius of land position 43°20′23.6″ N, 078°43′09.5″ W (NAD 83) in Olcott, NY.

(ii) *Enforcement period.* July 3 from 9:30 p.m. to 11 p.m. of each year.

(18) *North Tonawanda Fireworks, North Tonawanda, NY.* (i) *Location.* All U.S. waters of the East Niagara River within a 1,400 foot radius of land position 43°01′39.6″ N, 078°53′07.5″ W (NAD 83) in North Tonawanda, NY.

(ii) *Enforcement period.* July 4 from 8:45 p.m. to 10:15 p.m. of each year.

(19) *Tonawanda's Canal Fest Fireworks, Tonawanda, NY.* (i) *Location.* All U.S. waters of the East Niagara River within a 210 foot radius of land position 43°01′17.8″ N, 078°52′40.9″ W (NAD 83) in Tonawanda, NY.

(ii) *Enforcement period.* The fourth Sunday of July from 9 p.m. to 10:30 p.m. each year.

(20) *Celebrate Erie Fireworks, Erie, PA.* (i) *Location.* All U.S. waters of Presque Isle Bay within an 800 foot radius of land position 42°08′19″ N, 080°05′29″ W (NAD 83) in Erie, PA.

(ii) *Enforcement period.* The third weekend of August from 9:45 p.m. to 10:30 p.m. each year.

(21) *Conneaut Fourth of July Fireworks, Conneaut, OH.* (i) *Location.* All U.S. waters of Lake Erie within an 840 foot radius of position 41°58′01.3″ N, 080°33′39.5″ W (NAD 83) in Erie, PA.

(ii) *Enforcement period.* The first Sunday of July from 9 p.m. to 11:30 p.m. each year.

(22) *Fairport Harbor Mardi Gras, Fairport, OH.* (i) *Location.* All U.S. waters of Lake Erie within a 350 foot radius of land position 41°45′30″ N, 081°16′18″ W (NAD 83) east of the harbor entrance at Fairport Harbor Beach, OH.

(ii) *Enforcement period.* The beginning of the second week of July from 9 p.m. to 10:30 p.m. each year.

(23) *Mentor Harbor Yacht Club Fireworks, Mentor Harbor, OH.* (i) *Location.* All U.S. waters of Lake Erie and Mentor Harbor within a 700 foot radius of land position 41°43′36″ N, 081°21′09″ W (NAD 83) in Mentor Harbor, OH.

(ii) *Enforcement period.* July 3 from 9 p.m. to 10:30 p.m. each year.

(24) *Browns Football Halftime Fireworks, Cleveland, OH.* (i) *Location.* All U.S. waters of Cleveland Harbor and Lake Erie encompassed by a line beginning at approximate land position 41°30′49.4″ N, 081°41′37.2″ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31′10.6″ N, 081°41′53.0″ W; then southwest to 41°30′48.6″ N, 081°42′30.9″ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30′49.4″ N, 081°41′37.2″ W (NAD 83).

(ii) *Enforcement period.* On a Sunday during the second or third Cleveland Browns home game each year. The Captain of the Port will issue a Notice of Enforcement each year for this Browns Football Halftime Fireworks' safety zone.

(25) *City of Cleveland 4th of July, Cleveland, OH.* (i) *Location.* All U.S. waters of Lake Erie and Cleveland Harbor within a 1,000 foot radius of land position 41°30′10″ N, 081°42′36″ W (NAD 83) at Dock 20 in Cleveland, OH.

(ii) *Enforcement period.* July 4 from 9:30 p.m. to 11 p.m. each year.

(26) *Cleveland Yachting Club Fireworks Display, Rocky River, OH.* (i) *Location.* All U.S. waters of the Rocky River and Lake Erie within a 560 foot radius of land position 41°29′25.7″ N, 081°50′18.5″ W (NAD 83), at Sunset Point on the western side of the mouth of the Rocky River in Cleveland, OH.

(ii) *Enforcement period.* The second Thursday of July from 9:15 p.m. to 11 p.m. each year.

(27) *Sheffield Lake Fireworks, Sheffield Lake, OH.* (i) *Location.* All U.S. waters of Lake Erie within a 700 foot radius of land position 41°29′26.2″ N, 082°06′47.7″ W (NAD 83), at the lake front area in Sheffield Lake, OH.

(ii) *Enforcement period.* The second Friday of July from 9:30 p.m. to 11 p.m. each year.

(28) *Lorain 4th of July Celebration Fireworks, Lorain, OH.* (i) *Location.* All U.S. waters of Lorain Harbor within a 1,400 foot radius of land position 41°28′35.5″ N, 082°10′51.3″ W (NAD 83), east of the harbor entrance on the end of the break wall near Spitzer's Marina.

(ii) *Enforcement period.* July 4 from 9:15 p.m. to 11 p.m. each year.

(29) *Lorain Port Fest Fireworks Display, Lorain, OH.* (i) *Location.* All U.S. waters of Lorain Harbor within a 750 foot radius of land position 41°28′02.4″ N, 082°10′21.9″ W (NAD 83) in Lorain, OH.

(ii) *Enforcement period.* The third weekend of July from 9:45 p.m. to 11 p.m. each year.

(30) *Thunder of the Niagara Hydroplane boat races, North Tonawanda, NY.* (i) *Location.* All U.S. waters of Niagara River, near North Tonawanda, NY within 2 miles of the North Grand Island Bridge, encompassed by a line starting at 43°03′32.95″ N, 078°54′46.93″ W; to 43°03′14.55″ N, 078°55′15.97″ W; then to 43°02′39.72″ N, 078°54′13.05″ W; then to 43°02′59.99″ N, 078°53′41.99″ W; and returning to the point of origin (NAD 83).

(ii) *Enforcement period.* The second of weekend of August from 9 a.m. to 5 p.m. each year.

(31) *Antique Boat Show Hydroplane boat races, Grand Island, NY.* (i) *Location.* All waters of Niagara River, Grand Island, NY encompassed by a line starting at position 42°59′59″ N, 078°56′22″ W; East to 49°59′54″ N, 078°56′14″ W; South to 42°57′54″ N, 078°56′04″ W; West to 42°057′48″ N, 078°56′22″ W; and returning to the point of origin (NAD 83).

(ii) *Enforcement period.* The first weekend of September from 9 a.m. to 4 p.m. each year.

(32) *D-Day Conneaut Air Show, Conneaut, OH.* (i) *Location.* All U.S. waters of Conneaut Township Park, Lake Erie, Conneaut, OH encompassed by a line starting at 41°57.71′ N, 080°34.18′ W; to 41°58.36′ N, 080°34.17′ W; to 41°58.53′ N, 080°33.55′ W; to 41°58.03′ N, 080°33.72′ W; and returning to the point of origin. (NAD 83).

(ii) *Enforcement period.* The third weekend of August from 1:45 p.m. to 5:30 p.m. each year.

(33) *Bay Swim, Erie, PA.* (i) *Location.* All U.S. waters of Presque Isle Bay, Erie, PA within a 1000 feet of a line starting at Vista 3 in Presque Isle State Park at position 42°07′29.30″ N, 80°08′48.82″ W and ending at to the Erie Yacht Club at position 42°07′21.74″ N, 80°07′58.30″ W (NAD 83).

(ii) *Enforcement period.* The third week in June each year.

(34) *Rover Fest fireworks display, Cleveland, OH.* (i) *Location.* All U.S. waters of Lake Erie, Cleveland, OH within a 280 foot radius from position 41°30′34.23″ N and 081°41′55.73″ W (NAD 83).

(ii) *Enforcement period.* The second or third weekend of July each year.

(35) *Cleveland National Air show, Cleveland, OH.* (i) *Location.* The safety zone encompass the portion of Lake Erie and Cleveland Harbor within a line originating near Burke Lakefront Airport from position 41°30′20″ N and 081°42′20″ W to 41°30′50″ N and 081°42′49″ W, to 41°32′09″ N and 081°39′49″ W, to 41°31′53″ N and 081°39′24″ W, then return to the original position (NAD 83).

(ii) *Enforcement period.* On the Friday before Labor Day through the Wednesday following Labor Day with maximum daily times from 8 a.m. to 6 p.m.. The daily time period will be reduced as operations permit.

(b) *Definitions.* The following definitions apply to this section:

(1) ''On-scene Representative'' means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Buffalo to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) ''Public vessel'' means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(c) *Regulations.* In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within is the aforementioned safety zones are prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(1) The safety zones described in paragraph (a) of this section are closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) Vessel operators desiring to enter or operate within the safety zones described in paragraph (a) of this section must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in a safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

(d) *Exemption.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

(e) *Waiver.* For any vessel, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(f) *Notification.* The Captain of the Port Buffalo will notify the public that the safety zones in this section are or will be enforced by all appropriate means to the affected segments of the through publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Additionally, the enforcement dates and times for each of the safety zones listed above are subject to change, though the duration of enforcement would remain the same or nearly the same total number of hours as stated above. In either event, whether the safety zones occur at the dates and times as stated above, or whether the date or time of a safety zone changes, the Captain of the Port Buffalo will similarly make such notification as described in this paragraph (f). Such means of further notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is cancelled.

Dated: March 12, 2014.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2014–09862 Filed 4–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2014–OSERS–0061; CFDA Number: 84.373F]

Proposed Priority—Technical Assistance on State Data Collection—IDEA Fiscal Data Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a funding priority under the Technical Assistance (TA) on State Data Collection program. The Assistant Secretary may use this proposed priority for competitions in fiscal year (FY) 2014 and later years. We take this action to focus attention on an identified national need to provide TA to improve the capacity of States to meet the data collection requirements of the Individuals with Disabilities Education Act (IDEA).

DATES: We must receive your comments on or before July 15, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Matthew Schneer, U.S. Department of Education, 400 Maryland Avenue SW., room 4169, Potomac Center Plaza, Washington, DC 20202–2600.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Matthew Schneer. Telephone: (202) 245–6755 or by email: *Matthew.Schneer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priority in this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to clearly identify the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet their IDEA data collection and reporting requirements under sections 616 and 618 of IDEA. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve funds appropriated under Part B of IDEA to provide TA activities authorized under section 616(i).[1] Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under IDEA. The Consolidated Appropriations Act of 2014 gives the Secretary the authority to use FY 2014 funds reserved under section 611(c) to assist the

[1] All references to a statute in this priority are to sections of IDEA unless otherwise noted.

Secretary to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of IDEA (Pub. L. 113–76).

Program Authority: 20 U.S.C. 1411(c), 1416(i), and 1418(c); Consolidated Appropriations Act, 2014 (Pub. L. 113–76).

Applicable Program Regulations: 34 CFR 300.702.

Proposed Priority

This notice contains one proposed priority. The priority is:

IDEA Fiscal Data Center

Background

The purpose of this priority is to establish a Fiscal IDEA Data Center (Center) to provide States with TA for meeting their fiscal data collection and reporting obligations under IDEA.[2]

Within the past four years, the Secretary has instituted two new fiscal data collections that apply to State educational agencies (SEAs) that administer Part B of IDEA: (a) IDEA Part B local educational agency (LEA) Maintenance of Effort (MOE) Reduction and Coordinated Early Intervening Services (CEIS) [LEA MOE/CEIS] Data Collection, added in Federal fiscal year (FFY) 2009; and (b) Section V of the Part B Annual Application under IDEA (Section V), added in the FFY 2013 application. States may suffer significant monetary consequences as a result of noncompliance identified through these data collections.

LEA MOE/CEIS Requirement

Pursuant to 34 CFR 300.203(a), amounts provided to an LEA under Part B of IDEA shall not be used, except as provided in 34 CFR 300.204 and 205, to reduce the level of expenditures for the education of children with disabilities made by the LEA below the level of expenditures for the preceding fiscal year. Pursuant to section 613(a)(2)(C) and 34 CFR 300.205, in any fiscal year for which the IDEA section 611 subgrant received by an LEA exceeds the amount the LEA received for the previous fiscal year, and providing that the SEA has determined that the LEA is meeting the requirements of IDEA under section 616 and the SEA has not taken action against the LEA under section 616, the LEA may reduce the level of expenditures for the education of children with disabilities by not more than 50 percent of the amount of such excess in the current year's subgrant. Section 613(a)(2)(C)(iv) provides that the amount of funds expended by an LEA for CEIS shall count toward the maximum amount of expenditures for the education of children with disabilities that an LEA may reduce under section 613(a)(2)(C). Consistent with long-standing Department practice, if an LEA fails to maintain its level of expenditures for the education of children with disabilities, the SEA is liable in a recovery action under 20 U.S.C. 1234a to return to the Department, from non-Federal funds or funds for which accountability to the Federal government is not required, an amount equal to the amount by which the LEA failed to maintain its level of expenditures.

LEA MOE/CEIS Data Collection Requirements and Calculations

In order to meet the data collection requirement related to LEA MOE/CEIS, States must report the following data for all LEAs (including educational service agencies): (a) Section 611 and section 619 allocation amounts; (b) The amount by which the LEA reduced its level of fiscal effort under 34 CFR 300.205 (LEA MOE reduction); (c) For each LEA that reserved funds for CEIS (required or voluntary), the dollar amount that was reserved; and (d) The number of children receiving CEIS. In addition, the SEA must provide the following information: (a) The relevant LEA determination under section 616; and (b) Whether the LEA voluntarily reserved funds for CEIS[3] or was required to reserve funds for CEIS.[4]

States must collect valid and reliable data on LEA MOE/CEIS from their LEAs in order to report valid and reliable data on LEA MOE/CEIS to the Department. In order to determine the amount by which an LEA reduced local, or State and local, expenditures for the education of children with disabilities in the reporting year pursuant to 34 CFR 300.205, the LEA must determine: (a) The amount of local, or State and local, funds it expended in a prior year, as well as the amount expended in the reporting year; (b) What portion of the reduction of these expenditures, if any, taken in the reporting year is attributable to the LEA MOE exceptions in 34 CFR 300.204;[5] and (c) The portion that is attributable to the LEA MOE adjustment provision in 34 CFR 300.205.

The following is an example of the information needed to accurately report the amount by which an LEA reduced its expenditures of State and local funds for the education of children with disabilities pursuant to 34 CFR 300.205. This example assumes that the LEA calculates MOE based on State and local funds, not just local funds, and the reporting year is school year (SY) 2012–2013. In this example, the LEA must make the following calculations in order to report accurate LEA MOE/CEIS data:

(a) The amount of State and local funds expended for the education of children with disabilities in SY 2011–2012;

(b) The amount of State and local funds expended for the education of children with disabilities in SY 2012–2013;

(c) The amount of the reduction, if any, in State and local funds expended for the education of children with disabilities between SY 2011–2012 and SY 2012–2013;

(d) The amount of that reduction, if any, in SY 2012–2013 that is attributable to the exceptions permitted in 34 CFR 300.204; and

[2] For the purposes of this priority, IDEA fiscal data refers specifically to two annual data submissions authorized under section 618 of IDEA: (a) Section V of the Annual State Application under Part B of IDEA (Part B Annual Application); and (b) the LEA MOE/CEIS Collection, which was formerly referred to as the Report on Maintenance of Effort Reduction and Coordinated Early Intervening Services (Table 8).

[3] Under section 613(f), LEAs may voluntarily reserve not more than 15 percent of their IDEA subgrants, less any amount reduced because the LEA took the LEA MOE reduction in 34 CFR 300.205 to develop and implement CEIS for students in kindergarten through grade 12 who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

[4] Under section 618(d)(2)(B), if a State identifies significant disproportionality based on race or ethnicity in an LEA with respect to the identification of children as children with disabilities, or the placement of children with disabilities in particular educational settings, the LEA must use the maximum amount (15 percent) of funds allowable for CEIS to provide comprehensive CEIS for children in the LEA, particularly for children in those groups that were significantly overidentified.

[5] Under section 613(a)(2)(B) and 34 CFR 300.204, an LEA may reduce the level of expenditures for the education of children with disabilities below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with Part B of the IDEA, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child—

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the SEA under 34 CFR 300.704(c).

(e) If the LEA met requirements and had an increase in its FFY 2012 section 611 allocation, the amount of that reduction, if any, in SY 2012–2013 that is attributable to the MOE adjustment provision in 34 CFR 300.205.

LEA MOE/CEIS Data Quality Issues

Based on the Office of Special Education Programs' (OSEP's) review of the LEA MOE/CEIS data submitted for FFYs 2009 and 2010, OSEP determined that a significant number of States initially reported data that were not valid and reliable. For example, many States initially reported data indicating that their LEAs: [6]

(a) Decreased expenditures of non-Federal funds for the education of children with disabilities, pursuant to 34 CFR 300.205, even though they did not have a determination of meets requirements under section 616;

(b) Decreased expenditures of non-Federal funds for the education of children with disabilities, pursuant to 34 CFR 300.205, by more than the allowable reduction of 50 percent of the increase of their IDEA section 611 subgrant; and

(c) Did not reserve 15 percent of their Part B IDEA allocation for comprehensive CEIS when required to do so pursuant to 34 CFR 300.646.

In the process of providing TA to States, OSEP found that some States initially reported data that were not valid and reliable because the States did not fully understand the underlying fiscal requirements and the calculations necessary to meet the data collection requirements related to LEA MOE/CEIS.

In addition, OSEP has identified issues related to the quality of LEA MOE/CEIS data through monitoring and inquiries from States and LEAs. In a recent audit, the Office of Inspector General (OIG) also raised concerns about the validity and reliability of the LEA MOE/CEIS data.[7] These experiences demonstrate the continued need to provide TA on LEA MOE/CEIS data collection requirements in order to ensure States submit valid and reliable data that meet the data collection requirements.

State Maintenance of Financial Support (MFS) Requirement

Pursuant to section 612(a)(18)(A) and 34 CFR 300.163(a), States must not reduce the total amount of State financial support made available for special education and related services for children with disabilities, or made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. This requirement is applicable to State financial support made available by a State through all of its State agencies, and is not limited to the support made available through the SEA.[8]

Under section 612(a)(18)(B), the statutory consequence for a State that fails to maintain financial support without obtaining a waiver under section 612(a)(18)(C) is a reduction in the amount of the State's section 611 grant award in any fiscal year in an amount equal to the amount by which the State failed to maintain financial support.

Beginning in FY 2013, Congress made changes to the procedure for allocating Part B funds to States in section 611(d) of the IDEA in order to limit the impact of a one-time violation of the MFS requirement. While these changes did reduce the long-term effects of a State's failure to maintain financial support, reducing State allocations in accordance with section 612(a)(18) could still result in a significant reduction in a given fiscal year, depending on the amount by which the State failed to meet the requirements.

Section V of the Part B Annual Application

Section V of the Part B Annual Application requires States to provide the total amount of State financial support made available for special education and related services for children with disabilities. These data assist OSEP in determining whether States met the requirements of section 612(a)(18). For FFY 2013, States were required to report and certify the amount of State funds made available for State FYs 2011 and 2012.

As part of its monitoring responsibilities, OSEP has conducted fiscal monitoring, reviewed waiver requests under section 612(a)(18)(C), resolved Office of Management and Budget (OMB) Circular A–133 audits, and reviewed States' data submitted in Section V of their applications. Based on these activities OSEP has concluded that many States need additional TA to submit valid and reliable data in Section V. Specifically related to State MFS, OSEP found:

(a) Seventeen States could not demonstrate that they have procedures to properly calculate State MFS;

(b) Since 2009, 8 States submitted a total of 12 State MFS waiver requests that required considerable clarification; [9] and

(c) Multiple States had discrepancies between the data reported in Section V and data obtained from other sources, including publicly available data, requiring OSEP to devote significant staff time and resources to determining whether the MFS data for those States were valid and reliable.

Assisting States in reporting valid and reliable State MFS data is made more difficult because every State's special education funding structure is different and may change with State legislative action. As a result of these issues, OSEP believes that States need intensive, State-specific TA on how to collect and report valid and reliable State MFS data to meet the data collection requirements. OSEP believes that investing in the Center to assist States in collecting and reporting valid and reliable data is more efficient than identifying and correcting inaccurate data after it has been reported to the Department.

Proposed Priority

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate a Center to achieve, at a minimum, the following expected outcomes: (a) Improve the capacity of State staff to collect and report accurate fiscal data related to LEA MOE/CEIS and State MFS; and (b) increase States' knowledge of the underlying fiscal requirements and the calculations necessary to submit valid and reliable data on LEA MOE/CEIS and State MFS.

Project Activities. To meet the requirements of this priority, the Center at a minimum, must conduct the following activities:

Knowledge Development Activities

(a) To ensure that States have the capacity to collect and report accurate LEA MOE/CEIS and State MFS fiscal data, survey all 60 IDEA Part B programs in the first year to:

(1) Assess their capacity to collect and report high-quality LEA MOE/CEIS and State MFS fiscal data required under data collections authorized under section 618 and identify the policies and practices that facilitate or hinder the collection of accurate data consistent with IDEA fiscal requirements; and

[6] This is a partial list identified by OSEP.

[7] Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds (ED–OIG/L09L0011).

[8] See OSEP Memorandum 10–5, dated December 2, 2009 (*http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep10-05maintenanceoffinancialsupport.pdf*).

[9] Each request required numerous data submissions and teleconferences before the Department could respond to the waiver request. In two instances, Department staff travelled to the SEA to resolve data issues.

(2) Analyze and catalogue how States make available State financial support for special education and related services in order to develop templates that increase the capacity of States to collect and report accurate data;

(b) In the first year, analyze the LEA MOE/CEIS data submissions and data notes to determine common data collection and submission errors and to identify States in need of intensive or targeted TA.

Technical Assistance and Dissemination Activities

(a) Provide intensive TA to a minimum of 10 SEAs per year [10] to improve States' collection and submission of IDEA fiscal data consistent with the requirements of IDEA. Preference should be given to those States with the greatest need, including States with a demonstrated failure to accurately report MFS or LEA MOE/CEIS data, and States requesting TA. When working with States on LEA MOE/CEIS data, the TA should develop the capacity of SEAs to train LEAS to accurately report the required data;

(b) Provide a range of targeted and general TA products and services related to fiscal data to improve State capacity to collect and report valid and reliable data, including the dissemination of OSEP guidance on IDEA fiscal requirements and the development and dissemination of TA products on IDEA fiscal data collection and reporting requirements, and improve the capacity of SEAs to train LEAs to accurately report the required data; and

(c) Develop templates to assist States in collecting valid and reliable State MFS and LEA MOE/CEIS data so those data can be accurately reported to OSEP. These templates should be designed to accommodate variances in State school financing systems (insofar as possible) and remind users of the applicable required components of the calculation.

Coordination Activities

(a) Communicate and coordinate, on an ongoing basis, with other Department-funded projects, including those providing data-related support to States, such as the National Technical Assistance Center to Improve State Capacity to Accurately Collect and Report IDEA Data; and

(b) Maintain ongoing communication with the OSEP project officer.

[10] The requirement of the priority is that the Center provides intensive TA to 10 SEAs in any given year, which may include continued TA for some SEAs across more than one year.

Administrative Requirements

To be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority. OSEP encourages innovative approaches to meet these requirements, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will address States' capacity to: (1) Understand IDEA's statutory and regulatory basis for the fiscal reporting requirements; (2) collect valid and reliable fiscal data; (3) conduct required calculations consistent with IDEA requirements; and (4) report valid and reliable fiscal data; and

(b) Demonstrate knowledge of IDEA fiscal data collections, including the underlying statutory and regulatory requirements, current fiscal guidance, and State school funding systems;

(c) Demonstrate, in the narrative section of the application under ''Quality of the Project Services,'' how the proposed project would—

(1) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) The logic model by which the proposed project will achieve its intended outcomes;

(2) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

(3) Base the design of the TA on current research and make use of evidence-based practices. To meet this requirement, the applicant must describe—

(i) The current research about adult learning principles and implementation science that would inform the proposed TA; and

(ii) How the proposed project would incorporate current research and evidence-based practices in the development and delivery of its products and services;

(4) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base for IDEA fiscal data collection and reporting requirements;

(ii) How it proposes to conduct the survey of all 60 IDEA Part B Programs administered by SEAs;

(iii) How it proposes to conduct universal, general TA [11] for the 60 SEAs that have IDEA Part B programs;

(iv) How it proposes to provide targeted, specialized TA,[12] which must identify—

(A) The intended recipients of the products and services under this approach;

(B) How it proposes to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the LEA level; and

(C) Appropriate staff with the requisite responsibilities to receive the TA in these areas.

(v) How it proposes to provide intensive, sustained TA,[13] which must identify—

(A) How it proposes to select and recruit SEAs to work with the proposed project, considering the SEAs' need for the initiative, current infrastructure, available resources, and ability to build capacity at the LEA level;

(B) How it proposes to assist SEAs in building training systems that include professional development based on adult learning principles and coaching; and

(C) How it proposes to involve and work with other regional TA providers to assist SEAs with communication

[11] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[12] ''Targeted, specialized TA'' means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[13] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

between each level of the education system (e.g., districts, schools, families);

(5) Develop products and implement services to maximize the project's efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project would use technology to achieve the intended project outcomes;

(ii) With whom the proposed project would collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project would use non-project resources to achieve the intended project outcomes.

(d) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how—

(1) The proposed project would collect and analyze data on specific and measurable goals, objectives, and intended outcomes of the project. To address this requirement, the applicant must describe its—

(i) Proposed evaluation methodologies, including instruments, data collection methods, and analyses; and

(ii) Proposed standards or targets for determining effectiveness;

(2) The proposed project would use the evaluation results to examine the effectiveness of its implementation and its progress toward achieving intended outcomes; and

(3) The proposed methods of evaluation would produce quantitative and qualitative data that demonstrate whether the project achieved the intended outcomes.

(e) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project would encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes, including experience working with State and district fiscal systems.

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(f) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan would ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan would ensure that the products and services provided are of high quality; and

(4) The proposed project would obtain a diversity of perspectives, including those of State and local personnel, TA providers, researchers, and policy makers, among others, in the development and operation of its plan.

(g) Address the following application requirements:

(1) Include in Appendix A a logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589;*

(2) Include in Appendix A a conceptual framework for the project;

(3) Include in Appendix A person-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(4) Include in the budget the costs for attending the following events:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period;

(iii) A two-day trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive review meeting in Washington, DC, during the last half of the second year of the project period;

(5) Include in the budget a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with OSEP;

Note: With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period; and

(6) Maintain a Web site that meets government or industry-recognized standards for accessibility.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free 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 the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 28, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–10000 Filed 4–30–14; 8:45 am]

BILLING CODE 4000–01–P

Notices

Federal Register

Vol. 79, No. 84

Thursday, May 1, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

Summary: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–5007.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–XXXX.

Form Number: AID Form 507–1.

Title: Freedom Information/Privacy Act Record Request Form.

Type of Submission: New Information Collection.

Purpose: The purpose of the collection is to enable the U.S. Agency for International Development to locate applicable records and to respond to requests made under the Freedom of Information Act and the Privacy Act of 1974. Information includes sufficient personally identifiable information and/or source documents as applicable. Failure to provide the required information may result in no action being taken on the request. Authority to collect this information is contained in 5 U.S.C. 552, 5 U.S.C. 552a, and 22 CFR 215.4.

Annual Reporting Burden:

Respondents: 600.

Total annual responses: 600.

Total annual hours requested: 9000.

Dated: April 24, 2014.

Lynn P. Winston,

Chief, Bureau of Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development.

[FR Doc. 2014–09935 Filed 4–30–14; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot Resource Advisory Committee (RAC) will meet in Vancouver, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is recommend projects for 2014 Title II funds.

DATES: The meeting will be held June 3, 2014 at 10:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held via conference call at 1–888–244–9904, passcode: 7112214.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Gifford Pinchot National Forest (NF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sue Ripp, RAC Coordinator, by phone at 360–891–5153 or via email at *sripp@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/75E974C4AA20919A88256CCC00661422?OpenDocument.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 2, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Sue Ripp, RAC Coordinator, Gifford Pinchot NF Supervisor's Office, 10600 Northeast 51st Circle, Vancouver, Washington 98682; or by email to *sripp@fs.fed.us,* or via facsimile to 360–891–5045.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 25, 2014.

Janine Clayton,

Forest Supervisor.

[FR Doc. 2014–09942 Filed 4–30–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Gifford Pinchot Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Gifford Pinchot Resource Advisory Committee (RAC) will meet in Vancouver, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. The meeting is open to the public. The purpose of the meeting is to recommend projects for 2014 Title II funds.

DATES: The meeting will be held June 4, 2014 at 10:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held via conference call at 1–888–244–9904, passcode: 7112214.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Gifford Pinchot National Forest (NF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sue Ripp, RAC Coordinator, by phone at 360–891–5153 or via email at *sripp@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Documents/9F0710BEAFA405E888256CDE007487A9?OpenDocument.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 2, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Sue Ripp, RAC Coordinator, Gifford Pinchot NF Supervisor's Office, 10600 Northeast 51st Circle, Vancouver, Washington 98682; or by email to *sripp@fs.fed.us,* or via facsimile to 360–891–5045.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: April 25, 2014.

Janine Clayton,

Forest Supervisor.

[FR Doc. 2014–09943 Filed 4–30–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Survey of Building and Zoning Permit Systems

AGENCY: U.S. Census Bureau, 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: To ensure consideration, written comments must be submitted on or before June 30, 2014.

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(s) and instructions should be directed to Erica M. Filipek, U.S. Census Bureau, MCD, CENHQ Room 7K057, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–5161 (or via the Internet at *Erica.Mary.Filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request a three-year extension of a currently approved collection of the Form C–411, Survey of Building and Zoning Permit Systems. The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. These statistics help state and local governments and the Federal Government, as well as private industry, to analyze this important sector of the economy. The accuracy of the Census Bureau statistics regarding the amount of construction authorized depends on data supplied by building and zoning officials throughout the country.

The Census Bureau uses the Form C–411 to obtain information from state and local building permit officials needed for updating the universe of permit-issuing places. The questions pertain to the legal requirements for issuing building or zoning permits in the local jurisdictions. Information is obtained on such items as geographic coverage and types of construction for which permits are issued.

The universe of permit-issuing places is the sampling frame for the Building Permits Survey (BPS) and the Survey of Construction (SOC). These two sample surveys provide widely used measures of construction activity, including the economic indicators Housing Units Authorized by Building Permits and Housing Starts.

II. Method of Collection

The forms are sent to a jurisdiction when the Census Bureau has reason to believe that a new permit system has been established or an existing one has changed, based on information from a variety of sources including survey respondents, regional councils and the Census Bureau's Geography Division which keeps abreast of changes in corporate status. Responses typically approach 85 percent. There are three versions of the Form C–411:

• C–411(V) for verification of coverage for jurisdictions with existing permit systems.

• C–411(M) for municipalities where a new permit system may have been established.

• C–411(C) for counties where new permit systems may have been established.

III. Data

OMB Control Number: 0607–0350.

Form Number: C–411.

Type of Review: Regular submission.

Affected Public: State and Local Governments.

Estimated Number of Respondents: 2,000 per year.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: The cost to the respondents is estimated to be $12,490 based on an average hourly salary of $24.98 for local government employees. This estimate was taken from the Census Bureau's Annual Survey of Government Employment for 2012.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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: April 25, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–09928 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2014]

Foreign-Trade Zone 259—Koochiching County, Minnesota; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Koochiching Economic Development Authority, Grantee of FTZ 259, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. 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 docketed on April 24, 2014.

FTZ 259 was approved by the FTZ Board on November 28, 2003 (Board Order 1306, 68 FR 68590, 12/9/2003). The current zone includes the following sites: *Site 1* (1 acre)—International Falls Airport, located at the southwest corner of U.S. Highway 53 and Van Lynn Road, International Falls; *Site 2* (707 acres)—KEDA Business Park, located at the intersection of the D.W. & P. rail line and Minnesota Highway 11, south of the City of Rainer; and, *Site 3* (10 acres)—International Falls Business Park, located at the southeast corner of U.S. Highway 53 and 22nd Street, International Falls.

The grantee's proposed service area under the ASF would be Koochiching County, Minnesota, 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 International Falls Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include all of the existing sites as ''magnet'' sites. 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 2 be so exempted. No new subzones/usage-driven sites are being requested at this time. The application would have no impact on FTZ 259's previously authorized subzone.

In accordance with the FTZ Board's regulations, Camille Evans 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 FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is June 30, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 15, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: April 24, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–10012 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–849]

Steel Wire Garment Hangers From Taiwan: Rescission of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 1, 2014.

SUMMARY: The Department of Commerce (the ''Department'') is rescinding the administrative review of the antidumping duty order on steel wire garment hangers from Taiwan for the period of review (''POR''), August 2, 2012, through November 30, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–0413.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2014, based on a timely request for review by M&B Metal Products Company, Inc., Innovative Fabrication LLC/Indy Hanger and US Hanger Company, LLC (collectively ''Petitioners''), the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on steel wire garment hangers for 27 companies, covering the period August 2, 2012, through November 30, 2013.[1] On April 3, 2014, Petitioners withdrew their request for an administrative review of these 27 companies.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. Petitioners withdrew their request within the 90-day deadline. No other party requested an administrative review of the antidumping duty order. As a result, we are rescinding the administrative review of steel wire garment hangers from Taiwan for the POR.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 22, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10011 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 6147 (February 3, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after May 2014, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

OPPORTUNITY TO REQUEST A REVIEW: Not later than the last day of May 2014,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period of review
Antidumping Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/13–4/30/14
Brazil: Iron Construction Castings, A–351–503	5/1/13–4/30/14
Canada: Citric Acid and Certain Citrate Salts, A–122–853	5/1/13–4/30/14
India: Circular Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/13–4/30/14
India: Silicomanganese, A–533–823	5/1/13–4/30/14
Indonesia: Polyethylene Retail Carrier Bags, A–560–822	5/1/13–4/30/14
Japan: Antifriction Bearings, Ball, A–588–804	5/1/11–9/14/11
Japan: Gray Portland Cement and Cement Clinker, A–588–815	5/1/13–4/30/14
Kazakhstan: Silicomanganese, A–834–807	5/1/13–4/30/14
Republic of Korea: Polyester Staple Fiber, A–580–839	5/1/13–4/30/14
Socialist Republic of Vietnam: Polyethylene Retail Carrier Bags, A–552–806	5/1/13–4/30/14
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/13–4/30/14
Taiwan: Certain Circular Welded Carbon Steel Pipe and Tubes, A–583–008	5/1/13–4/30/14
Taiwan: Polyester Staple Fiber, A–583–833	5/1/13–4/30/14
Taiwan: Polyethylene Retail Carrier Bags, A–583–843	5/1/13–4/30/14
Taiwan: Stainless Steel Plate in Coils, A–583–830	5/1/13–4/30/14
Taiwan: Stilbenic Optical Brightening Agents, A–583–848	5/1/13–4/30/14
The People's Republic of China: Aluminum Extrusions, A–570–967	5/1/13–4/30/14
The People's Republic of China: Circular Welded Carbon Quality Steel Line Pipe, A–570–935	5/1/13–4/30/14
The People's Republic of China: Citric Acid and Certain Citrate Salts, A–570–937	5/1/13–4/30/14
The People's Republic of China: Iron Construction Castings, A–570–502	5/1/13–4/30/14
The People's Republic of China: Oil Country Tubular Goods, A–570–943	5/1/13–4/30/14
The People's Republic of China: Pure Magnesium, A–570–832	5/1/13–4/30/14
The People's Republic of China: Stilbenic Optical Brightening Agents, A–570–972	5/1/13–4/30/14
Turkey: Circular Welded Carbon Steel Pipes and Tubes, A–489–501	5/1/13–4/30/14
Turkey: Light-Walled Rectangular Pipe and Tube, A–489–815	5/1/13–4/30/14
United Arab Emirates: Certain Steel Nails, A–520–804	5/1/13–4/30/14
United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/11–9/14/11
Venezuela: Silicomanganese, A–307–820	5/1/13–4/30/14
Countervailing Duty Proceedings	
Brazil: Iron Construction Castings, C–351–504	1/1/13–12/31/13
Socialist Republic of Vietnam: Polyethylene Retail Carrier Bags, C–552–805	1/1/13–12/31/13
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/13–12/31/13
The People's Republic of China: Aluminum Extrusions, C–570–968	1/1/13–12/31/13
The People's Republic of China: Citric Acid and Certain Citrate Salts, C–570–938	1/1/13–12/31/13
The People's Republic of China: Drawn Stainless Steel Sinks,[2] C–570–984	8/6/12–12/31/13

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] In the notice of opportunity to request administrative review that published on April 1, 2014 (79 FR 18260) the POR for the above referenced case was incorrect. The period listed above is the correct POR for this case.

countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department has clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[4] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov.*[5] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of May 2014. If the Department does not receive, by the last day of May 2014, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 25, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10021 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

[4] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for June 2014

The following Sunset Review is scheduled for initiation in June 2014 and will appear in that month's Notice of Initiation of Five-Year Sunset Review (''Sunset Review'').

Antidumping Duty Proceedings

Frozen Fish Fillets from Vietnam (A–552–801) (2nd Review).

Department Contact

Charles Riggle (202) 482–0650.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in June 2014.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in June 2014.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 23, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10022 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year reviews (''Sunset Reviews'') of the antidumping and countervailing duty (''AD/CVD'') orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* (May 1, 2014).

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–878	731–TA–1013	China	Saccharin (2nd Review)	David Goldberger, (202) 482–4136.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: ''*http://enforcement.trade.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303.[1]

Revised Factual Information Requirements

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after August 16, 2013.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i)

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Extension of Time Limits,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under part 351 of the Department's regulations expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

Letters of Appearance and Administration Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[4]

[4] *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: April 25, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10020 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Ports and Marine Technology Trade Mission to India

February 2–6, 2015.

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, Industry and Analysis is amending its notice for the *India Ports and Marine Technology Trade Mission to India* scheduled for November 9–15, 2014, published at 79 FR 14478, March 14, 2014, to notify potential applicants that the trade mission has been rescheduled for February 2–6, 2015.

Additional Information: On March 14, 2014, the International Trade Administration published a notice in the **Federal Register** (79 FR 14478) announcing an Executive-led trade mission to Kochi, Mumbai, and Ahmedabad, India with an optional stop in Goa, India to be held November 9–

15, 2014. The notice provided that recruitment for the trade mission would begin immediately and applications received after August 15, 2014, would be considered only if space and scheduling constraints permit.

This notice confirms that the India Ports and Marine Technology Trade Mission to India is rescheduled for February 2–6, 2015. Recruitment for the mission will continue, and conclude on October 20, 2014. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis beginning June 23, 2014, until the maximum of 20 participants is selected. Applications received after October 20, 2014, will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Hector Rodriguez, Office of Industry and Analysis, Trade Promotion Programs, Phone: 202–482–0629; Fax: 202–482–9000, Email: *Hector.Rodriguez@trade.gov.*

Elnora Moye,

Program Assistant.

[FR Doc. 2014–09896 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XD270]

General Advisory Committee and Scientific Advisory Subcommittee to the U.S. Section to the Inter-American Tropical Tuna Commission; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a public meeting of the Scientific Advisory Subcommittee (SAS) to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) on June 4, 2014, and a meeting of the General Advisory Committee (GAC) to the U.S. Section to the IATTC on June 5, 2014. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the SAS will be held on June 4, 2014, from 10 a.m. to 5 p.m. PDT (or until business is concluded), and the meeting of the GAC will be held on June 5, 2014, from 8:30 a.m. to 5 p.m. PDT (or until business is concluded).

ADDRESSES: Both meetings will be held in the Pacific Conference Room (Room 300) at NMFS, Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, California 92037–1508. Please notify Rachael Wadsworth of your plans to attend either meeting, or interest in a teleconference option. The meetings of the SAS and the GAC on June 4 and 5, 2014, will be accessible by webinar and instructions will be emailed to meeting participants.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, West Coast Region, NMFS, at *Rachael.Wadsworth@noaa.gov*, or at (562) 980–4036.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, 16 U.S.C. 953, the Department of State has appointed a General Advisory Committee (GAC) and a Scientific Advisory Subcommittee (SAS) to the U.S. Section to the IATTC. The U.S. Section consists of four U.S. Commissioners to the IATTC and a representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The GAC and SAS support the U.S. Section to the IATTC in an advisory capacity; in particular, they provide advice on the development of U.S. policies and positions. NOAA Fisheries West Coast Regional Office provides administrative support for the GAC and SAS in cooperation with the Department of State. The meetings of the GAC and SAS are open to the public. The time and manner of public comment will be at the discretion of the GAC and SAS chairmen.

The next annual meeting of the IATTC is scheduled from July 7 through July 18, 2014, in Lima, Peru. For more information on the IATTC meeting, please visit the IATTC's Web site: *http://www.iattc.org/HomeENG.htm.*

Meeting Topics

The SAS meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, North Pacific albacore, and Pacific bluefin tunas; (2) updates on bycatch mitigation measures; (3) evaluation of the IATTC's recommended conservation measures, U.S. proposals, and proposals from other IATTC members; (4) input to the GAC; and (5) other issues that arise.

The GAC meeting topics will include, but are not limited to, the following: (1) Relevant stock status updates, including yellowfin, bigeye, skipjack, North Pacific albacore, and Pacific bluefin tunas; (2) U.S. regulatory changes that could affect tuna fisheries in the eastern Pacific Ocean; (3) the status of U.S legislation to implement the Antigua Convention; (4) input from the SAS; (5) formulation of advice on issues that may arise at the upcoming 2014 IATTC meeting, including the IATTC's recommended conservation measures, U.S. proposals, and proposals from other IATTC members; and (6) other issues as they arise.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachael Wadsworth at (562) 980–4036 by May 26, 2014.

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

Dated: April 28, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–09958 Filed 4–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Travel Management Office, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Defense Travel Management Office is publishing Civilian Personnel Per Diem Bulletin Number 291. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States when applicable. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 291 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mrs. Sonia Malik, 571–372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Defense Travel Management Office for non-foreign areas outside the contiguous United States. It supersedes Civilian Personnel Per Diem Bulletin Number 290. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the

Department of Defense. For more information or questions about per diem rates, please contact your local travel office. Civilian Bulletin 291 includes updated rates for Alaska, Hawaii, and the Midway Islands.

Dated: April 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		118		228	01/01/2013
ADAK						
01/01 - 12/31	120		79		199	07/01/2003
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
BARROW						
05/15 - 09/14	177		94		271	04/01/2013
09/15 - 05/14	159		93		252	04/01/2013
BETHEL						
01/01 - 12/31	179		109		288	12/01/2013
BETTLES						
01/01 - 12/31	135		62		197	10/01/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/01/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/01/2006
COPPER CENTER						
05/15 - 09/15	149		85		234	01/01/2013
09/16 - 05/14	99		80		179	01/01/2013
CORDOVA						
01/01 - 12/31	95		102		197	12/01/2013
CRAIG						
04/01 - 09/30	129		77		206	01/01/2013
10/01 - 03/31	80		72		152	01/01/2013
DEADHORSE						
01/01 - 12/31	170		70		240	05/01/2014
DELTA JUNCTION						
01/01 - 12/31	128		54		182	12/01/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
DENALI NATIONAL PARK						
05/01 - 09/30	159		94		253	12/01/2013
10/01 - 04/30	89		87		176	12/01/2013
DILLINGHAM						
05/15 - 10/15	185		111		296	01/01/2011
10/16 - 05/14	169		109		278	01/01/2011
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		102		223	02/01/2012
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	06/01/2007
EIELSON AFB						
05/15 - 09/15	154		96		250	01/01/2013
09/16 - 05/14	75		88		163	01/01/2013
ELFIN COVE						
05/15 - 09/10	175		46		221	01/01/2013
09/11 - 05/14	150		44		194	01/01/2013
ELMENDORF AFB						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
FAIRBANKS						
09/16 - 05/14	75		88		163	01/01/2013
05/15 - 09/15	154		96		250	01/01/2013
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/01/2002
FT. GREELY						
01/01 - 12/31	128		54		182	12/01/2013
FT. RICHARDSON						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
FT. WAINWRIGHT						
05/15 - 09/15	154		96		250	01/01/2013
09/16 - 05/14	75		88		163	01/01/2013
GAMBELL						
01/01 - 12/31	137		42		179	04/01/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
GLENNALLEN						
05/15 - 09/15	149		85		234	01/01/2013
09/16 - 05/14	99		80		179	01/01/2013
HAINES						
01/01 - 12/31	107		101		208	01/01/2011
HEALY						
10/01 - 04/30	89		87		176	12/01/2013
05/01 - 09/30	159		94		253	12/01/2013
HOMER						
05/05 - 09/16	159		99		258	12/01/2013
09/17 - 05/04	89		92		181	12/01/2013
JUNEAU						
05/16 - 09/15	159		104		263	12/01/2013
09/16 - 05/15	135		102		237	12/01/2013
KAKTOVIK						
01/01 - 12/31	165		86		251	10/01/2002
KAVIK CAMP						
01/01 - 12/31	150		69		219	10/01/2002
KENAI-SOLDOTNA						
05/01 - 10/31	99		110		209	01/01/2013
11/01 - 04/30	79		108		187	01/01/2013
KENNICOTT						
01/01 - 12/31	275		109		384	01/01/2013
KETCHIKAN						
05/01 - 09/30	135		88		223	01/01/2013
10/01 - 04/30	99		85		184	01/01/2013
KING SALMON						
05/01 - 10/01	225		91		316	10/01/2002
10/02 - 04/30	125		81		206	10/01/2002
KLAWOCK						
04/01 - 09/30	129		77		206	01/01/2013
10/01 - 03/31	80		72		152	01/01/2013
KODIAK						
05/01 - 09/30	152		93		245	02/01/2012

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	100		88		188	02/01/2012
KOTZEBUE						
01/01 - 12/31	219		115		334	02/01/2012
KULIS AGS						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
MCCARTHY						
01/01 - 12/31	275		109		384	01/01/2013
MCGRATH						
01/01 - 12/31	165		69		234	10/01/2006
MURPHY DOME						
05/15 - 09/15	154		96		250	01/01/2013
09/16 - 05/14	75		88		163	01/01/2013
NOME						
01/01 - 12/31	150		132		282	01/01/2013
NUIQSUT						
01/01 - 12/31	180		53		233	10/01/2002
PETERSBURG						
01/01 - 12/31	110		118		228	01/01/2013
POINT HOPE						
01/01 - 12/31	200		49		249	01/01/2011
POINT LAY						
01/01 - 12/31	225		51		276	08/01/2011
PORT ALEXANDER						
01/01 - 12/31	150		43		193	08/01/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/01/2002
PRUDHOE BAY						
01/01 - 12/31	170		70		240	05/01/2014
SELDOVIA						
05/05 - 09/16	159		99		258	12/01/2013
09/17 - 05/04	89		92		181	12/01/2013
SEWARD						
10/16 - 04/30	84		85		169	01/01/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 10/15	174		94		268	01/01/2013
SITKA-MT. EDGECUMBE						
10/01 - 04/30	169		113		282	01/01/2013
05/01 - 09/30	209		117		326	01/01/2013
SKAGWAY						
05/01 - 09/30	135		88		223	01/01/2013
10/01 - 04/30	99		85		184	01/01/2013
SLANA						
05/01 - 09/30	139		55		194	02/01/2005
10/01 - 04/30	99		55		154	02/01/2005
SPRUCE CAPE						
05/01 - 09/30	152		93		245	02/01/2012
10/01 - 04/30	100		88		188	02/01/2012
ST. GEORGE						
01/01 - 12/31	220		51		271	05/01/2014
TALKEETNA						
01/01 - 12/31	100		89		189	10/01/2002
TANANA						
01/01 - 12/31	150		132		282	01/01/2013
TOK						
10/01 - 05/14	85		84		169	01/01/2013
05/15 - 09/30	95		85		180	01/01/2013
UMIAT						
01/01 - 12/31	350		64		414	02/01/2012
VALDEZ						
05/16 - 09/14	219		121		340	01/01/2013
09/15 - 05/15	139		113		252	01/01/2013
WAINWRIGHT						
01/01 - 12/31	175		83		258	01/01/2011
WASILLA						
05/01 - 09/30	164		103		267	01/01/2013
10/01 - 04/30	96		96		192	01/01/2013
WRANGELL						
05/01 - 09/30	135		88		223	01/01/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	99		85		184	01/01/2013
YAKUTAT						
01/01 - 12/31	105		94		199	01/01/2011
AMERICAN SAMOA						
AMERICAN SAMOA						
01/01 - 12/31	139		96		235	09/01/2012
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		84		243	12/01/2013
HAWAII						
[OTHER]						
07/01 - 08/21	145		98		243	05/01/2014
08/22 - 06/30	115		98		213	05/01/2014
CAMP H M SMITH						
01/01 - 12/31	177		111		288	05/01/2014
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		111		288	05/01/2014
FT. DERUSSEY						
01/01 - 12/31	177		111		288	05/01/2014
FT. SHAFTER						
01/01 - 12/31	177		111		288	05/01/2014
HICKAM AFB						
01/01 - 12/31	177		111		288	05/01/2014
HONOLULU						
01/01 - 12/31	177		111		288	05/01/2014
ISLE OF HAWAII: HILO						
07/01 - 08/21	145		98		243	05/01/2014
08/22 - 06/30	115		98		213	05/01/2014
ISLE OF HAWAII: OTHER						
01/01 - 12/31	189		134		323	05/01/2014
ISLE OF KAUAI						
01/01 - 12/31	305		141		446	05/01/2014
ISLE OF MAUI						
01/01 - 12/31	259		131		390	05/01/2014

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ISLE OF OAHU						
01/01 - 12/31	177		111		288	05/01/2014
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	305		141		446	05/01/2014
KILAUEA MILITARY CAMP						
07/01 - 08/21	145		98		243	05/01/2014
08/22 - 06/30	115		98		213	05/01/2014
LANAI						
01/01 - 12/31	229		121		350	05/01/2014
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		111		288	05/01/2014
MCB HAWAII						
01/01 - 12/31	177		111		288	05/01/2014
MOLOKAI						
01/01 - 12/31	157		77		234	05/01/2014
NAS BARBERS POINT						
01/01 - 12/31	177		111		288	05/01/2014
PEARL HARBOR						
01/01 - 12/31	177		111		288	05/01/2014
SCHOFIELD BARRACKS						
01/01 - 12/31	177		111		288	05/01/2014
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		111		288	05/01/2014
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		77		202	05/01/2014
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	85		76		161	07/01/2012
ROTA						
01/01 - 12/31	140		106		246	12/01/2013
SAIPAN						
01/01 - 12/31	140		96		236	12/01/2013
TINIAN						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	85		76		161	07/01/2012
PUERTO RICO						
[OTHER]						
01/01 - 12/31	109		112		221	06/01/2012
AGUADILLA						
01/01 - 12/31	124		76		200	10/01/2012
BAYAMON						
01/01 - 12/31	195		128		323	09/01/2010
CAROLINA						
01/01 - 12/31	195		128		323	09/01/2010
CEIBA						
01/01 - 12/31	139		92		231	10/01/2012
CULEBRA						
01/01 - 12/31	150		98		248	03/01/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
01/01 - 12/31	139		92		231	10/01/2012
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
01/01 - 12/31	195		128		323	09/01/2010
HUMACAO						
01/01 - 12/31	139		92		231	10/01/2012
LUIS MUNOZ MARIN IAP AGS						
01/01 - 12/31	195		128		323	09/01/2010
LUQUILLO						
01/01 - 12/31	139		92		231	10/01/2012
MAYAGUEZ						
01/01 - 12/31	109		112		221	09/01/2010
PONCE						
01/01 - 12/31	149		89		238	09/01/2012
RIO GRANDE						
01/01 - 12/31	169		123		292	06/01/2012
SABANA SECA [INCL ALL MILITARY]						
01/01 - 12/31	195		128		323	09/01/2010
SAN JUAN & NAV RES STA						
01/01 - 12/31	195		128		323	09/01/2010

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
VIEQUES						
01/01 - 12/31	175		95		270	03/01/2012
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	05/01/2006
12/15 - 04/14	187		97		284	05/01/2006
ST. JOHN						
04/15 - 12/14	163		98		261	05/01/2006
12/15 - 04/14	220		104		324	05/01/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	05/01/2006
12/15 - 04/14	299		111		410	05/01/2006
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	173		55		228	07/01/2013

[FR Doc. 2014–09940 Filed 4–30–14; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0057]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, DPFPA 03, entitled ''Pentagon Facilities Emergency and Incident Notification Records'' to its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will provide an automated notification mechanism to contact PFPA employees and mission partners to provide situational awareness, facilitate recall, and to give instructions during an emergency or incident impacting the Pentagon facilities.

DATES: Comments will be accepted on or before June 2, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 18, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPFPA 03

SYSTEM NAME:

Pentagon Facilities Emergency and Incident Notification Records.

SYSTEM LOCATION:

Pentagon Force Protection Agency (PFPA), Integrated Emergency Operations Center (IEOC), 9000 Defense Pentagon, Washington, DC 20301–9000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current PFPA personnel (civilian employees, contractors, military).

Points of contact at leased facilities within PFPA's Area of Responsibility.

DoD mission partners who have the authority and ability to assist PFPA in times of emergencies to include Washington Headquarters Services (WHS), Office of the Secretary of Defense (OSD), the Joint Staff and Arlington Fire and Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, DoD Identification (DoD ID) number, organization, work and personal phone number(s), and work and personal email addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2674, Operation and Control of Pentagon Reservation and Defense Facilities in National Capital Region; DoD Directive 5105.68, Pentagon Force Protection Agency (PFPA); DoD Instruction (DoDI) O–3020.43, Emergency Management and Incident Command on the Pentagon Facilities; DoDI 6055.17, DOD Installation Emergency Management (IEM) Program; and Director of Administration and Management Administrative Instruction 30, Force Protection on the Pentagon Reservation.

PURPOSE:

To provide an automated notification mechanism to contact PFPA employees and mission partners to provide situational awareness, facilitate recall, and to give instructions during an emergency or incident impacting the Pentagon facilities.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the OSD's compilation of systems of records notices may apply to this system.

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

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's full name and organization.

SAFEGUARDS:

Records are maintained in a controlled facility with Closed Circuit TV (CCTV). Physical entry is restricted by the use of locks and guards, accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by Common Access Card (CAC) and username/passwords, which are changed periodically. Data is encrypted at rest and in transit.

Records are stored in encrypted databases that are only accessible on DoD networks that are routinely scanned to assess system vulnerabilities. Only a limited number of operators have access to the data. Common Access Cards (CAC) and passwords are used to authenticate authorized system operators in the system application. CAC authentication is required for users (recipients of notifications) to update their contact information and other personal data through the system

desktop client. Users can only view and update their own information.

For users that are not networked, they must call, tell face-to-face or send an encrypted email to an operator to have their information loaded into the database or the information is provided to an operator via their organization's roster update which users have consented to provide.

The system data is encrypted both at rest and in transit. Firewalls protect the DoD networks and the system uses Secured Sockets Layer (SSL) with Public Key Infrastructure (PKI) certificates in the data transfer protocols for encryption.

Administratively PFPA regularly monitors the users' security practices to ensure only authorized users have access to PII.

RETENTION AND DISPOSAL:

TEMPORARY—Cut off when superseded or obsolete, destroy immediately after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Emergency Management, Pentagon Force Protection Agency IEOC, 9000 Defense Pentagon, Washington, DC 20301–9000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Office of Emergency Management, Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000.

Requests should contain individual's full name and organization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include full name, organization, current address, and the number of this system of records notice.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2014–09944 Filed 4–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2014–0010]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Department of the Air Force proposes to add a new system of records, F084 NMUSAF B, entitled, ''Air Force Museum Artifact Tracking System (AFMATS)'' to its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will be used to systematically collect and retain acquisition data regarding individuals donating historical property or archival materials to the National Museum of the United States Air Force. This system will enable the United States Air Force Heritage Program museums, heritage centers, and historical holdings to provide responses to requests for information regarding the status/location of donated historical property and archival materials. The Air Force may then establish title to the historical property and archival materials.

DATES: Comments will be accepted on or before June 2, 2014. The proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address **FOR FURTHER INFORMATION CONTACT** or from the Defense privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.*

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended were submitted on April 14, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F084 NMUSAF B

SYSTEM NAME:

Air Force Museum Artifact Tracking System (AFMATS).

SYSTEM LOCATION:

National Museum of the United States Air Force, 1100 Spaatz Street, Wright-Patterson Air Force Base, OH 45433–7102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the general public that donate museum materials to the United States Air Force Heritage Program museums and heritage centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home telephone and personal cellular numbers, mailing address, and personal email address.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 U.S.C. Subtitle D, Air Force; Air Force Instruction 84–103, United States Air Force Heritage Program; Air Force Policy Directive (AFPD) 84–1, Historical Information, Property and Art.

PURPOSE(S):

To collect and retain acquisition data regarding individuals donating historical property or archival materials to the National Museum of the United States Air Force. Enable the United States Air Force Heritage Program museums, heritage centers and historical holdings to provide responses to requests for information regarding the status/location of donated historical property and archival materials. Allow the Air Force to establish title to the historical property and archival material.

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

In addition to those disclosures generally permitted under Title 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to Title 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses published at the beginning of the Air Force's compilation of systems of records notices may apply to this system.

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

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Name and home mailing address.

SAFEGUARDS:

Paper records are maintained within divisional office areas of the National Museum of the United States Air Force, which is restricted by the use of locks and a controlled entry system. Electronically and optically stored records are maintained in system software with password-protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained. The system maintains data encryption, role based access, Common Access Card access, and authentication through a unique ORACLE I.D. and password, as well as, through secure socket protocols.

RETENTION AND DISPOSAL:

Historical records are retained for 20 years after property leaves AF inventory and all legal settlements have been finalized before information in databases will be deleted; paper records will be destroyed by shredding, or maceration when no longer needed.

SYSTEM MANAGER AND ADDRESS:

Museum Curator, National Museum of the United States Air Force, 1100 Spaatz Street, Wright-Patterson Air Force Base, OH 45433–7102.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to National Museum of the U.S. Air Force, 1100 Spaatz Street, Wright-Patterson Air Force Base, Ohio 45433–7102.

For verification purposes, individuals should provide their full name and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to National Museum of the U.S. Air Force, 1100 Spaatz Street, Wright-Patterson Air Force Base, Ohio 45433–7102.

For verification purposes, individuals should provide their full name and any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C., 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Air Force Privacy and Civil Liberties Program 32 CFR part 806b, and may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2014–09952 Filed 4–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2014–0011]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records, F010 AFSPC A, entitled ''Telecommunications Notification System'' in its existing inventory of records systems subject to the Privacy Act of 1974, as amended. This system will provide notification, via electronic mail and telephone, for personnel recalls, real world, and exercise threat conditions.

DATES: Comments will be accepted on or before June 2, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.* The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on April 7, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F010 AFSPC A

SYSTEM NAME:

Telecommunications Notification System (January 28, 2013, 78 FR 5791).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add after last paragraph ''Pacific Air Forces, 15th Wing Command Post, Joint Base Pearl Harbor-Hickam, HI 96853.

45 Space Wing Command Post, Patrick Air Force Base, FL 32925–3002.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Active duty, Reserve, Air National Guard, government civilians, contractors and foreign nationals assigned to an Air Force base.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add after second to last paragraph ''Program Manager, HQ PACAF/A6XP, Joint Base Pearl Harbor-Hickam, HI 96853.

Command Post Superintendent, 15th Wing Command Post, Joint Base Pearl Harbor-Hickam, HI 96853.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals at the 30 Space Wing Command Post seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Command Post Superintendent, 30 Space Wing Command Post, 867 Washington Ave, Suite 205, Vandenberg Air Force Base, CA 93437–6117.

Individuals at PACAF seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Command Post Superintendent, 15th Wing Command Post, Joint Base Pearl Harbor-Hickam, HI 96853.

Individuals at the 45 Space Wing Command Post seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Command Post Superintendent, 45 Space Wing Command Post, Patrick Air Force Base, FL 32925–3002.

Individuals with the Air National Guard seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Air National Guard Readiness Center, 3500 Fetchet Avenue Joint Base Andrews, MD 20762–5000.

Individuals seeking to determine whether information about themselves is contained in this system of records at other Air Force installations should address written inquiries to the Command Post Superintendent of that installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individuals should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals at the 30 Space Wing Command Post seeking access to information about themselves should address written inquiries to Command Post Superintendent, 30 Space Wing Command Post, 867 Washington Ave, Suite 205, Vandenberg Air Force Base, CA 93437–6117.

Individuals at PACAF seeking access to information about themselves should address written inquiries to Command Post Superintendent, 15th Wing Command Post, Joint Base Pearl Harbor-Hickam, HI 96853.

Individuals at the 45 Space Wing Command Post seeking access to information about themselves should address written inquiries to Command Post Superintendent, 45 Space Wing Command Post, Patrick Air Force Base, FL 32925–3002.

Individuals with the Air National Guard seeking access to information about themselves should address written inquiries to the Air National Guard Readiness Center, 3500 Fetchet Avenue, Joint Base Andrews, MD 20762–5000.

Individuals seeking access to information about themselves at other Air Force installations should address written inquiries to the Command Post Superintendent of that installation. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individuals should provide their full name, SSN, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the

foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

[FR Doc. 2014–09964 Filed 4–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2014–0011]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Department of the Army proposes to add a new system of records, A0600–63 DAPE G–1, entitled ''Commander's Risk Reduction Dashboard Interim'' to its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will provide Commanders with information they need to recognize early warning signs and proactively engage in intervention activities to help reduce Soldier suicides, risk-related deaths, and other negative outcomes of high risk behavior. This system of records notice authorizes Army Commanders of Battalion level and lower level Commanders access to Personally Identifiable Information (PII) and Protected Health Information (PHI) of Soldiers under their command to help identify individuals with high risk profiles.

DATES: Comments will be accepted on or before June 2, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Jr., Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 22, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–63 DAPE G–1

SYSTEM NAME:

Commander's Risk Reduction Dashboard Interim

SYSTEM LOCATION:

Army Analytics Group (AAG) at the Defense Manpower Data Center (DMDC), 400 Gigling Road, Seaside, CA 93935–6784.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army active duty Soldiers, Reserve and National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, Unit Identification Code (UIC), Person-Event Data Environment (PDE) assigned identification numbers and DoD ID number.

Suicide risk data such as suicide gestures/self-harm, accidents/injuries, and suicide attempts; alcohol offenses, drug offenses, crimes against property, crimes against persons, domestic abuse, child abuse, screened at the Alcohol Substance Abuse Program (ASAP), illicit positive drug tests, enrollments in the Alcohol Substance Abuse Program (ASAP), readiness limiting behavioral health profiles, financial problems, letters of reprimand, pending medical board, administrative separations pending, family advocacy program use, courts martial, eviction notices, disciplinary actions, Absent Without Leave (AWOL), and change in marital status.

Data indicating the Unit Identification Code (UIC) to which Soldiers are assigned, and data indicating the UIC for which a Commander maintains command authority will be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, Safety Programs; 10 U.S.C 3013, Secretary of the Army; 10 U.S.C. 1071–1085, Medical and Dental Care; 10 U.S.C. 1079a, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); 10 U.S.C. 1097a and 1097b, TRICARE Prime and TRICARE Program; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. Chapter 55, Medical and Dental Care; 28 U.S.C. 534, Uniform Federal Crime Reporting Act of 1988; 29 CFR Part 1960, Occupational Illness/Injury Reporting Guidelines for Federal Agencies; 42 U.S.C. 290dd–2 Confidentiality of records; 42 U.S.C. 10606 et seq., Victims' Rights, as implemented by Department of Defense, Instruction 1030.2, Victim and Witness Assistance Procedures; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; 44 U.S.C. 3101, Records Management by Federal Agencies; 45 CFR Parts 160 and 164, Health Insurance Portability and Accountability Act, General Administrative Requirements and Privacy and Security Rules; 50 U.S.C. Supplement IV, Appendix 454, as amended, Persons liable for training and service; Pub. L. 91–596, Occupational Safety and Health Act of 1970; Pub. L. 104–91, Health Insurance Portability and Accountability Act of 1996; Federal Drug Free Workplace Act of 1988, DoD 6010.8–R, CHAMPUS; DoD 6010.8–R, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); DoD 6025.18–R, DoD Health Information Privacy Regulation; DoD Directive 1030.1, Victim and Witness Assistance; DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities (MTFs); DoD Directive 6040.37, Confidentiality of Medical Quality Assurance (QA) Records; DoD Instruction 6055.1, DoD Safety and Occupational Health Program; DoD Directive 6490.02E, Comprehensive Health Surveillance; DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures; Army Regulation 40–66,

Medical Record Administration and Health Care Documentation; Army Regulation 190–45, Military Police Law Enforcement Reporting; Army Regulation 195–2, Criminal Investigation Activities; Army Regulations 385–10, Army Safety Program; Army Regulation 385–40, Accident Reporting and Records; Army Regulation 600–8–104, Army Military Human Resource Records Management; Army Regulation 600–63, Army Health Promotion, Rapid Action Revision, 20 Sep 09, Paragraph 4–4 Suicide Prevention and Surveillance; Army Regulation 600–85, Army Substance Abuse Program; and Army Regulation 608–18, Family Advocacy Program.

PURPOSE(S):

To provide Commanders with information they need to recognize early warning signs and proactively engage in intervention activities to help reduce Soldier suicides, risk-related deaths, and other negative outcomes of high risk behavior. Authorizes Army Commanders of Battalion level and lower level Commanders access to Personally Identifiable Information (PII) and Protected Health Information (PHI) of Soldiers under their command to help identify individuals with high risk profiles.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of System of Records Notices may apply to this system.

Note: This system of records contains protected health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974, as amended, or mentioned in this system of records notice.

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

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records are retrieved by PDE–ID number.

SAFEGUARDS:

The computerized records are located in restricted areas accessible only to authorized personnel with documented security clearances. Physical access is controlled by dual access controls, alarm system, surveillance system, properly cleared and trained personnel with approved need-to-know, and computer hardware and software security features. Records are restricted to designated personnel and protected by a layered architecture and data encryption. Protection is commensurate with the sensitivity level of the data.

RETENTION AND DISPOSAL:

Records are maintained until no longer needed for conducting business, but not longer than 6 years, then destroy by erasure or deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff G–1, Headquarters, Department of the Army, Army Center for Substance Abuse Program G1, 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Army Center for Substance Abuse Programs, 386 3rd Ave, Building 1467, Fort Knox, KY 40121–2071.

Individuals should provide their full name, date of birth, and DoD ID Number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746 to declare that the information provided in the request for notification is true and correct, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Army Center for Substance Abuse Programs, 386 3rd Ave, Building 1467, Fort Knox, KY 40121–2071.

Individuals should provide their full name, date of birth, DoD ID Number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (signature)'.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and or contesting contents and appealing denial authority determinations are contained in Army Regulation 340–21; 32 CFR part 505.

RECORD SOURCE CATEGORIES:

Army Central Registry (ACR), Army Safety Management Information System (ASMIS), U.S. Army Criminal Investigation Command (CID), Centralized Operations Police Suite (COPS), Military Police Reporting System (MPRS), CID Information Management System (CIMS), Automated System Crime Records Center (ASCRC), CIMS Automated Criminal Investigation/Criminal Intelligence (ACI2), Defense Casualty Information Processing System (DCIPS), DoD Suicide Event Registry—Army (DoDSER–A), Drug and Alcohol Management Information System (DAMIS), Electronic Profiling System (e-Profile), Human Resources Command (HRC), Integrated Total Army Personnel Database (ITAPDB), Army Organization Server (AOS), Defense Manpower Data Center (DMDC), and Total Officer Personnel Management Information System (TOPMIS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2014–09959 Filed 4–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2014–0012]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice, A0500–3c DAMO, entitled ''Emergency Relocation Group (ERG) Roster Files'' in its existing inventory of records systems subject to the Privacy Act of 1974, as amended. This system will enable Army wide organizations using recall rosters to contact necessary military personnel, DoD civilians and contractors, and other individuals to respond to all hazard emergencies, including acts of nature, natural disasters, accidents, and technological and/or attack related emergencies. In addition, to contact family members or other individuals listed as an emergency contact in the event of injury or casualty.

DATES: Comments will be accepted on or before June 2, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

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

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/*. The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended were submitted on April 11, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: April 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0500–3c DAMO

SYSTEM NAME:

Emergency Relocation Group (ERG) Roster Files (March 21, 2013, 78 FR 17388).

CHANGES:

SYSTEM ID:

Delete entry and replace with ''A0500–3c G3/5/7 (DAMO)''

SYSTEM NAME:

Delete entry and replace with ''Department of the Army Emergency Personnel Location Records System and Files.''

SYSTEM LOCATIONS:

Delete entry and replace with ''For Headquarters Department of the Army:

Headquarters, Department of the Army, Army Continuity of Operations Program Office, Washington, DC 20310–0400.

For decentralized locations at Headquarters, Department of the Army, Army field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''This system of records contains information concerning Army active duty military personnel, the Army National Guard, U.S. Army Reserve, Army civilian employees and contractors who may be required to respond to all hazards emergencies including acts of nature, natural disasters, accidents, and technological and or/attack related emergencies.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, DoD ID Number, work address, home address, email addresses, office phone number, cell phone number, emergency contact's name, relationship to individual, work address, home address, office phone number, cell phone number, email addresses, any other phone numbers that may be needed in the event of a major emergency.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 44 U.S.C. 3101, the Federal Records Act; E.O. 12656, Assignment of Emergency Preparedness Responsibilities; DoD Directive 3020.26, Continuity of Operations Policy and Planning; Army Regulation 500–3, Army Continuity of Operations.''

PURPOSE(S):

Delete entry and replace with ''To enable Army wide organizations using recall rosters to contact necessary military personnel, DoD civilians and contractors, and other individuals to respond to all hazard emergencies, including acts of nature, natural disasters, accidents, and technological and/or attack related emergencies. In addition, to contact family members or other individuals listed as an emergency contact in the event of injury or casualty.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''These records are retrieved by a combination of the individual's name and DoD ID number.''

SAFEGUARDS:

Delete entry and replace with ''DoD Components and approved users ensure that electronic records collected and used are maintained in controlled areas accessible only to authorized personnel. Physical security differs from site to site, but the automated records must be maintained in controlled areas accessible only by authorized personnel. Access to computerized data is restricted by use of common access

cards (CACs) and is accessible only by users with an authorized account. The system and electronic backups are maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards and locks.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Keep in Current File Area (CFA) until recalls are updated and then until no longer needed for conducting business, but not longer than 6 years after the event, then destroy. Records are destroyed by erasing or shredding paper files.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Deputy Division Chief, Headquarters, Department of the Army, Army Continuity of Operations Program Office, 400 Army Pentagon, Washington, DC 20310–0400.

For decentralized locations at Headquarters, Department of the Army, Army field operating agencies, major commands, installations and activities, official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the commander of the organization to which the service member is assigned.

For decentralized locations at Headquarters, Department of the Army, Army field operating agencies, major commands, installations, and activities, official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, all individuals should furnish full name, DoD ID number, current address and telephone number, signature and specific information concerning the event or incident that will assist in locating the record. Individuals must furnish proof of identity.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves in this system should address written inquiries to the commander of the organization to which the service member is assigned.

Requests should contain the individuals' full name, DoD ID number, current address, telephone number and signature.

For decentralized locations at Army field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information originates within the Department of the Army, its Commands, along with personnel who submit information such as emergency contacts.''

* * * * *

[FR Doc. 2014–09960 Filed 4–30–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0030]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; U.S. Department of Education Grant Performance Report Form (ED 524B)

AGENCY: Department of Education (ED), Office of the Secretary/Office of the Deputy Secretary (OS).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 2, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0030 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Joyce Green-Millner, 202–245–8036.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested

data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: U.S. Department of Education Grant Performance Report Form (ED 524B).

OMB Control Number: 1894–0003.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 5,300.

Total Estimated Number of Annual Burden Hours: 118,400.

Abstract: The ED 524B form and instructions are used in order for grantees to meet Department of Education (ED) deadline dates for submission of performance reports for ED discretionary grant programs. Recipients of multi-year discretionary grants must submit an annual performance report for each year funding has been approved in order to receive a continuation award. The annual performance report should demonstrate whether substantial progress has been made toward meeting the approved goals and objectives of the project. ED program offices may also require recipients of ''forward funded'' grants that are awarded funds for their entire multi-year project up-front in a single grant award to submit the ED 524B on an annual basis. In addition, ED program offices may also require recipients to use the ED 524B to submit their final performance reports to demonstrate project success, impact and outcomes. In both the annual and final performance reports, grantees are required to provide data on established performance measures for the grant program (e.g., Government Performance and Results Act measures) and on project performance measures that were included in the grantee's approved grant application. The ED 524B also contains a number of questions related to project financial data such as Federal and non-Federal expenditures and indirect cost information. Performance reporting requirements are found in 34 CFR 74.51, 75.118, 75.253, 75.590 and 80.40 of the Education Department General Administrative Regulations.

Dated: April 28, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–09983 Filed 4–30–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA: Number: 84.358A.]

Application Deadline for Fiscal Year (FY) 2014; Small, Rural School Achievement Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: Under the Small, Rural School Achievement (SRSA) program, the U.S. Department of Education (Department) awards grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline for submission of fiscal year (FY) 2014 SRSA grant applications.

An eligible LEA that is required to submit an application must do so electronically by the deadline in this notice.

DATES: *Application Deadline:* May 30, 2014, 4:30:00 p.m. Washington, DC time.

FOR FURTHER INFORMATION CONTACT: Eric Schulz, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W107, Washington, DC 20202. Telephone: (202) 401–0039 or by email: *reap@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Which LEAs are eligible for an award under the SRSA program?

An LEA (including a public charter school that is considered an LEA under State law) is eligible for an award under the SRSA program if—

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600, or each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; and

(b)(1) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics (NCES); or

(2) The Secretary has determined, based on a demonstration by the LEA and concurrence of the State educational agency, that the LEA is located in an area defined as rural by a governmental agency of the State.

Note: The school locale codes are the locale codes determined on the basis of the NCES school code methodology in place on the date of enactment of section 6211(b) of the Elementary and Secondary Education Act of 1965, as amended.

Which eligible LEAs must submit an application to receive an FY 2014 SRSA Grant Award?

An eligible LEA must submit an application to receive an FY 2014 SRSA grant award if that LEA has never submitted an application for SRSA funds in any prior year.

All eligible LEAs that need to submit an application to receive an SRSA grant award in a given year are highlighted in yellow on the SRSA eligibility spreadsheets, which are posted annually on the SRSA program Web site at *www2.ed.gov/programs/reapsrsa/eligibility.html.*

Under the regulations in 34 CFR 75.104(a), the Secretary makes a grant only to an eligible party that submits an application. Given the limited purpose served by the application under the SRSA program, the Secretary considers the application requirement to be met if an LEA submitted an SRSA application for any prior year. In this circumstance, unless an LEA advises the Secretary by the application deadline that it is withdrawing its application, the Secretary deems the application that an LEA previously submitted to remain in effect for FY 2014 funding, and the LEA does not have to submit an additional application.

We intend to provide, by May 15, 2014, a list of LEAs eligible for FY 2014 funds on the Department's Web site at *http://www2.ed.gov/programs/reapsrsa/eligibility.html.* This Web site will indicate which eligible LEAs must submit an electronic application to the Department to receive an FY 2014 SRSA grant award, and which eligible LEAs are considered already to have met the application requirement.

Eligible LEAs that need to submit an application in order to receive FY 2014 SRSA funds must do so electronically

by the deadline established in this notice.

Electronic Submission of Applications

An eligible LEA that is required to submit an application to receive FY 2014 SRSA funds must submit an electronic application by May 30, 2014, 4:30:00 p.m., Washington, DC time. If it submits its application after this deadline, the LEA will receive a grant award only to the extent that funds are available after the Department awards grants to other eligible LEAs under the program.

Submission of an electronic application involves the use of the Department's G5 System. Prospective applicants can access the electronic application for the SRSA Program at: *www.g5.gov.* When applicants access this site, they will receive specific instructions regarding the information to include in the SRSA application.

The hours of operation of the G5 Web site are 6:00 a.m. Monday until 9:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday (Washington, DC time). Please note that the system is unavailable after 8:00 p.m. on Sundays, and after 9:00 p.m. on Wednesdays for maintenance (Washington, DC time). Any modifications to these hours are posted on the G5 Web site.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free 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 the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 7345–7345b.

Dated: April 28, 2014.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2014–10025 Filed 4–30–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Jacob K. Javits Gifted and Talented Students Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information

Jacob K. Javits Gifted and Talented Students Education Program

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.206A.

DATES:

Applications Available: May 1, 2014.

Deadline for Notice of Intent to Apply: May 21, 2014.

Deadline for Transmittal of Applications: June 24, 2014.

Deadline for Intergovernmental Review: August 25, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Jacob K. Javits Gifted and Talented Students Education (Javits) program is to carry out a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary and secondary schools nationwide to meet the special educational needs of gifted and talented students.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on April 21, 2008 (73 FR 21329).

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Javits Demonstration Programs.

Under this priority, grantees must ''scale up'' and evaluate models designed to increase the number of gifted and talented students from underrepresented groups who, through gifted and talented education programs, perform at high levels of academic achievement.

For this priority, ''scaling up'' means selecting a model designed to increase the number of gifted and talented students from underrepresented groups who, through gifted and talented education programs, perform at high levels of academic achievement that has demonstrated effectiveness on a small scale and expanding the model for use with gifted and talented students in broader settings (such as in multiple schools, grade levels, or districts, or in other educational settings) or with different populations of gifted and talented students (i.e., different populations of these students based on differences such as the socioeconomic, racial, ethnic, geographic, and linguistic backgrounds of the students and their families). With regard to this priority, the term ''underrepresented groups'' includes economically disadvantaged individuals, individuals with limited English proficiency, and individuals with disabilities.

To meet this priority, applicants must include all of the following in their applications:

(1) Evidence from one or more scientifically based research and evaluation studies indicating that the proposed model has raised the achievement of gifted and talented students from one or more underrepresented groups in one or more core subject areas.

(2) Evidence from one or more scientifically based research and evaluation studies that the proposed model has resulted in the identification of and provision of services to increased numbers of students from underrepresented groups who participate in gifted and talented education programs.

(3) Evidence that the applicant has significant expertise on its leadership team in each of the following areas: Gifted and talented education, research and program evaluation, content knowledge in one or more core academic subject areas, and working with underrepresented groups.

(4) A sound plan for implementing the model in multiple settings or with multiple populations.

(5) A research and evaluation plan that employs an experimental or quasi-experimental design to measure the impact of the model on the achievement of students from underrepresented groups, including students who are economically disadvantaged or limited English proficient, or who have disabilities, and on the number of these students who are identified as gifted

and talented and served through gifted and talented programs.

Note: Evaluation methods using an experimental design are best for determining program effectiveness. Thus, when feasible, the project must use an experimental design under which participants (e.g., students, teachers, classrooms, or schools) are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants with non-participants that have similar characteristics before the model is implemented.

Program Authority: 20 U.S.C. 7253.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final priority published in the **Federal Register** on April 21, 2008 (73 FR 21329).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$500,000.

Estimated Average Size of Awards: $400,000 per year.

Estimated Number of Awards: 8–13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, other public agencies, and other private agencies and organizations, including Indian tribes and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4506), and Native Hawaiian organizations. Native Hawaiian organizations are defined as Native Hawaiian educational organizations; Native Hawaiian community-based organizations; and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: Participation of Private School Children and Teachers.* Applications for funds under the Javits program must provide for the equitable participation of private school children and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in professional development programs serving such students, located in areas served by the grant recipient.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the program office. To obtain a copy via the Internet, use one of the following addresses: *www.ed.gov/fund/grant/apply/grantapps/index.html* or *www.ed.gov/programs/javits/applicant.html.* To obtain a copy from the program office, contact: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E244, Washington, DC 20202–6200. Telephone: (202) 401–3751 or by email: *Irene.Harwarth@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–877–576–7734.

Individuals with disabilities can obtain a copy of the application package in accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Department strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by emailing Irene Harwarth at *Irene.Harwarth@ed.gov.* This short email message should include a subject line that reads ''Intent to Apply'' and the text of the email should provide (1) the name of the applicant and (2) the contact person (name, phone number, and email). Applicants that do not submit an ''Intent to Apply'' email may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font will not be accepted.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Begin numbering at the right bottom of the first page in Arabic numerals (''1'') and number the pages consecutively throughout the document.
- Include all critical information in the program narrative.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 1, 2014.

Deadline for Notice of Intent to Apply: May 21, 2014.

Deadline for Transmittal of Applications: June 24, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by

mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 25, 2014.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Jacob K. Javits Gifted and Talented Students Education Program, CFDA number 84.206A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Javits program, CFDA number 84.206A, at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.206, not 84.206A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News

and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E244, Washington, DC 20202–4260. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.206A, LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.206A, 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package. The maximum score for all selection criteria is 140 points. The points or weights assigned to each criterion are indicated in parentheses.

(a) Quality of the Project Design (45 Points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which—

(1) The goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(2) The design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs; and

(3) The proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(b) Quality of Project Personnel (20 Points)

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors—

(1) The qualifications, including relevant training and experience, of the project director or principal investigator; and

(2) The qualifications, including relevant training and experience, of key project personnel.

(c) Quality of the Management Plan (30 Points)

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(d) Quality of the Project Evaluation (45 Points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the project evaluation, the Secretary considers the extent to which—

(1) The methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(2) The methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(3) The evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out activities under a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Pursuant to the Government Performance and Results Act of 1993 (GPRA), the Department has established three measures to assess the impact of the program. These measures focus on the quality of project designs, professional development, and significant academic achievement in targeted student populations. The Department collects data for these measures twice over the life of the grant (mid-term and final) by convening an expert panel of scientists

and practitioners to review information from a sample of annual performance reports and self-evaluations prepared by grantees.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Irene Harwarth, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E244, Washington, DC 20202–6200. Telephone: (202) 401–3751 or by email: *Irene.Harwarth@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 the site. In addition, you can view a version of this document in text or PDF at the following site: *www.ed.gov/programs/javits/applicant.html.*

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 28, 2014.

Deborah Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2014–10004 Filed 4–30–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2013–BT–DET–0053]

Energy Efficiency Program for Industrial Equipment: Final Determination Classifying CSA Group as a Nationally Recognized Certification Program for Small Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of final determination.

SUMMARY: This notice announces a final determination by the U.S. Department of Energy (DOE) classifying CSA Group (CSA) as a nationally recognized certification program under 10 CFR 431.447 and 431.448.

DATES: This final determination is effective May 1, 2014.

ADDRESSES: The docket for this rulemaking is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-DET-0053.* This Web page contains a link to the docket for this final rule on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1317. Email: *Lucas.Adin@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Part C of Title III of the Energy Policy and Conservation Act contains energy conservation requirements for, among other things, electric motors and small electric motors, including test procedures, energy efficiency standards, and compliance certification requirements. 42 U.S.C. 6311–6316.[1] Section 345(c) of EPCA directs the Secretary of Energy to require manufacturers of electric motors ''to certify through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c).

Regulations to implement this statutory directive are codified in Title 10 of the Code of Federal Regulations Part 431 (10 CFR Part 431) at sections 431.36 (Compliance Certification), 431.20 (Department of Energy recognition of nationally recognized certification programs), and 431.21 (Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs). Sections 431.20 and 431.21 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by DOE. With the support of a variety of interests, including industry and energy efficiency advocacy groups, DOE published a final rule on May 4, 2012, that established requirements for small electric motors that are essentially identical to the criteria and procedures for national recognition of an energy efficiency certification program for electric motors. See 77 FR 26608, 26629 (codifying parallel provisions for small electric motors at 10 CFR 431.447 and 431.448).

For a certification program to be classified by the DOE as being nationally recognized in the United

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

States for the testing and certification of small electric motors, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with sections 431.447 and 431.448. In sum, for the Department to grant such a petition, the certification program must: (1) Have satisfactory standards and procedures for conducting and administering a certification system, and for granting a certificate of conformity; (2) be independent of small electric motor manufacturers, importers, distributors, private labelers or vendors; (3) be qualified to operate a certification system in a highly competent manner; and (4) be expert in the test procedures and methodologies in IEEE Standard 112–2004 Test Methods A and B, IEEE Standard 114–2010, CSA Standard C390–10, and CSA C747 or similar procedures and methodologies for determining the energy efficiency of small electric motors, and have satisfactory criteria and procedures for selecting and sampling small electric motors for energy efficiency testing. 10 CFR 431.447(b).

Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the organization meets the above criteria, be accompanied by documentation that supports the narrative statement, and be signed by an authorized representative. 10 CFR 431.447(c).

II. Discussion

Pursuant to sections 431.447 and 431.448, on November 1, 2013, CSA submitted a ''Petition for Recognition as a *Nationally Recognized Certification Program* for small electric motors'' (''Petition'' or ''CSA Petition''). The Petition was accompanied by a cover letter from CSA to the Department, and the petition itself contained five separate sections—(1) Scope and Application, (2) Overview of CSA Group, (3) Certification and Testing—Quality Management System, (4) CSA Group's Motor Efficiency Verification Program—Product Directory, and (5) Examples of Other CSA Group Accreditations. In accordance with the requirements of section 431.448(b), DOE published CSA's petition in the **Federal Register** on December 30, 2013 and requested public comments. 78 FR 79423.

In response to the notice of petition, the National Electrical Manufacturers Association (NEMA), a trade association representing manufacturers of electrical products and equipment, including small electric motors, submitted comments to DOE in a letter dated January 24, 2013 (Comment response to the published Notice of Petition, No. 3). In these comments, NEMA generally stated its support for CSA's petition and recommended that DOE grant recognition to CSA. The comments also specifically explained that, in NEMA's view, (1) CSA has satisfactory standards and procedures for conducting and administering a certification system, including periodic follow-up to ensure basic model compliance; (2) CSA is independent of small motor manufacturers, importers, distributors, private labelers, or vendors; and (3) CSA is expert in the content and application of the test procedures and methodologies in IEEE Std 112–2004 Test Methods A and B, IEEE Std 114–2010, CSA 390–10, and CSA C747 or similar procedures and methodologies for determining the energy efficiency of small electric motors. NEMA added that CSA uses technically appropriate and statistically rigorous criteria and procedures for selecting and sampling small electric motors for energy efficiency testing.

As required by 10 CFR 431.448(d), DOE published on March 4, 2014 an interim notice of determination regarding CSA's petition. 79 FR 12189. Having received no comments on the interim determination, the Department hereby announces its final determination pursuant to 10 CFR 431.448(e) that CSA is classified as a nationally recognized certification program for small electric motors.

Issued in Washington, DC, on April 25, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–09965 Filed 4–30–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3300–004.
Applicants: La Paloma Generating Company, LLC.
Description: La Paloma Generating Company, LLC Supplement to June 25, 2013 Triennial Updated Market Power Analysis for the Southwest Region.
Filed Date: 4/23/14.
Accession Number: 20140423–5198.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–271–001.
Applicants: El Paso Electric Company.
Description: Removal of Rate Schedule No. 112 Nonconforming Firm PTP Svc Agreement w/PNM to be effective 1/1/2014.
Filed Date: 4/24/14.
Accession Number: 20140424–5043.
Comments Due: 5 p.m. ET 5/15/14.

Docket Numbers: ER14–1761–000.
Applicants: American Electric Power Service Corporation.
Description: Notice of Cancellation of American Electric Power Service Corporation on Behalf of AEP Energy Partners, Inc.
Filed Date: 4/23/14.
Accession Number: 20140423–5205.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1762–000.
Applicants: American Electric Power Service Corporation.
Description: Notice of Cancellation of American Electric Power Service Corporation on Behalf of CSW Energy Services, Inc.
Filed Date: 4/23/14.
Accession Number: 20140423–5206.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1764–000.
Applicants: American Electric Power Service Corporation.
Description: Notice of Cancellation of American Electric Power Service Corporation on Behalf of the AEP Operating Companies.
Filed Date: 4/23/14.
Accession Number: 20140423–5208.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1765–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue No. Z2–027; Original Service Agreement Nos. 3802 and 3803 to be effective 3/28/2014.
Filed Date: 4/24/14.
Accession Number: 20140424–5033.
Comments Due: 5 p.m. ET 5/15/14.

Docket Numbers: ER14–1766–000.
Applicants: American Electric Power Service Corporation.
Description: Notice of Cancellation of American Electric Power Service Corporation on behalf of CSW Operating Companies.
Filed Date: 4/24/14.
Accession Number: 20140424–5080.
Comments Due: 5 p.m. ET 5/15/14.

Docket Numbers: ER14–1767–000.
Applicants: Titan Gas and Power.
Description: MBR Tariff to be effective 6/23/2014.
Filed Date: 4/24/14.
Accession Number: 20140424–5138.
Comments Due: 5 p.m. ET 5/15/14.

The filings are accessible in the Commission's eLibrary system by

clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–09974 Filed 4–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–480–001.
Applicants: California Independent System Operator Corporation.
Description: 2014–04–21 Compliance Filing in Docket No. ER14–480 to be effective 5/1/2014.
Filed Date: 4/21/14.
Accession Number: 20140421–5221.
Comments Due: 5 p.m. ET 5/12/14.

Docket Numbers: ER14–1320–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–04–22_SA 2632 Northeast Power–ITC–AECI T–T 2nd Amendment to be effective 1/29/2014.
Filed Date: 4/22/14.
Accession Number: 20140422–5127.
Comments Due: 5 p.m. ET 5/13/14.

Docket Numbers: ER14–1729–000.
Applicants: California Independent System Operator Corporation.
Description: 2012–04–22 Errata to Attachment C to NVE EIMIA Filing to be effective N/A.
Filed Date: 4/22/14.
Accession Number: 20140422–5180.
Comments Due: 5 p.m. ET 5/13/14.

Docket Numbers: ER14–1750–000.
Applicants: Consolidated Edison Company of New York, New York Independent System Operator, Inc.
Description: Con Edison NYPA restated OM Agreement No. 2013 to be effective 4/23/2014.
Filed Date: 4/22/14.
Accession Number: 20140422–5264.
Comments Due: 5 p.m. ET 5/13/14.

Docket Numbers: ER14–1754–000.
Applicants: Ameren Illinois Company.
Description: Meter Replacement Letter Agreement Between AIC, IMEA, and City of Casey to be effective 3/23/2014.
Filed Date: 4/22/14.
Accession Number: 20140422–5221.
Comments Due: 5 p.m. ET 5/13/14.

Docket Numbers: ER14–1755–000.
Applicants: Lykins Energy Solutions.
Description: MBR Application to be effective 5/23/201.
Filed Date: 4/23/14.
Accession Number: 20140423–5048.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1756–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement with Aries Solar Holding, LLC to be effective 4/24/2014.
Filed Date: 4/23/14.
Accession Number: 20140423–5107.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1757–000.
Applicants: ITC Midwest LLC.
Description: Filing of Amended and Restated Facilities and Operating Agreement to be effective 6/24/2014.
Filed Date: 4/23/14.
Accession Number: 20140423–5111.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1758–000.
Applicants: Appalachian Power Company.
Description: Notice of Cancellation of Appalachian Power Company.
Filed Date: 4/23/14.
Accession Number: 20140423–5121.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1759–000.
Applicants: Appalachian Power Company.
Description: Notice of Cancellation of Appalachian Power Company.
Filed Date: 4/23/14.
Accession Number: 20140423–5132.
Comments Due: 5 p.m. ET 5/14/14.

Docket Numbers: ER14–1760–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–04–23_SA 2659 Ameren-FutureGen Construction Agreement to be effective 4/18/2014 under ER14–1760 Filing Type: 10.
Filed Date: 4/23/14.
Accession Number: 20140423–5164.
Comments Due: 5 p.m. ET 5/14/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–37–000.
Applicants: AEP Generating Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Generating Company.
Filed Date: 4/22/14.
Accession Number: 20140422–5259.
Comments Due: 5 p.m. ET 5/13/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 23, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–09973 Filed 4–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–2–000]

Review of Cost Submittals by Other Federal Agencies for Administering Part I of the Federal Power Act; Notice Requesting Questions and Comments on Fiscal Year 2013 Other Federal Agency Cost Submissions

In its Order *On Rehearing Consolidating Administrative Annual Charges Bill Appeals And Modifying Annual Charges Billing Procedures,* 109 FERC ¶ 61,040 (2004) (October 8 Order) the Commission set forth an annual process for Other Federal Agencies (OFAs) to submit their costs related to Administering Part I of the Federal Power Act. Pursuant to the established process, the Director of the Financial Management Division, Office of the Executive Director, on October 25, 2013, issued a letter requesting the OFAs to submit their costs by December 31, 2013 using the OFA Cost Submission Form.

Upon receipt of the agency submissions, the Commission posted the information in eLibrary, and issued, on March 4, 2014, a notice announcing the date for a technical conference to review the submitted costs. On March 20, 2014, the Commission held the technical conference. Technical conference transcripts, submitted cost forms, and detailed supporting documents are all available for review under Docket No. AD14–2. These documents are accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and are available for review in the Commission's Public Reference Room in Washington, DC.

Interested parties may file specific questions and comments on the FY 2013 OFA cost submissions with the Commission under Docket No. AD14–2, no later than April 28, 2014. Once filed, the Commission will forward the questions and comments to the OFAs for response.

Anyone with questions pertaining to the technical conference or this notice should contact Norman Richardson at (202) 502–6219 (via email at *norman.richardson@ferc.gov*) or Raven A. Rodriguez at (202) 502–6276 (via email at *raven.rodriguez@ferc.gov*).

Dated: April 14, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–09947 Filed 4–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1767–000]

Titan Gas and Power; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Titan Gas and Power's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 15, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–09976 Filed 4–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Lykins Energy Solutions; Docket No. ER14–1755–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lykins Energy Solution's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 14, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–09975 Filed 4–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–7–000]

Third-Party Provision of Reactive Supply and Voltage Control and Regulation and Frequency Response Services; Supplemental Notice of Workshop

On February 20, 2014, the Federal Energy Regulatory Commission (FERC or Commission) announced that staff will convene a workshop on Tuesday, April 22, 2014 to obtain input on third-party provision of reactive supply and voltage control and regulation and frequency response services. The staff-led workshop will be held in the Commission Meeting Room at the Commission's headquarters at 888 First Street NE., Washington, DC 20426 from 9 a.m. to 3 p.m. eastern daylight time (EDT). Members of the Commission may attend the workshop, which will also be open for the public to attend. Advance registration is not required, but encouraged. Attendees may register at the following Web page: *https://www.ferc.gov/whats-new/registration/04-22-14-form.asp.*

Attached to this supplemental notice is an agenda for the workshop. If any changes are made, the revised agenda will be posted prior to the event on the Calendar of Events on the Commission's Web site, *www.ferc.gov.* In addition to this Supplemental Notice, staff is concurrently issuing in this docket a Staff Report, ''Payment for Reactive Power.'' In the report, staff highlights some of the topics to be explored with respect to Schedule 2 service. The Staff Report can be found on the Commission's Web site, *http://www.ferc.gov/legal/staff-reports/2014/04-11-14-reactive-power.pdf.*

This workshop is not intended to address the substance of any particular case pending before the Commission. Those who wish to file written comments may do so by June 9, 2014. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number AD14–7–000.

The workshop will be transcribed. There will also be a free webcast of the workshop. Anyone with Internet access interested in viewing this workshop can do so by navigating to the FERC Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the workshop via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call (703) 996–3100.

FERC workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For more information about this workshop, please contact Rahim Amerkhail at *rahim.amerkhail@ferc.gov* or (202) 502–8266. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8004.

Dated: April 14, 2014.

Kimberly D. Bose,

Secretary.

BILLING CODE 6717–01–P

Third-Party Provision of Reactive Supply and Voltage Control and Regulation and Frequency Response Services

Docket No. AD14-7-000

April 22, 2014

Agenda

9:00 a.m. – 9:20 a.m. Welcome and Opening Remarks

9:20 a.m. – 11:50 a.m. Morning Roundtable Discussions: Should Reactive Supply And Frequency Response Be Considered Obligations Without Payment Or Services Provided For Payment?

Reactive Supply

As discussed in more detail in the staff report being released concurrently with this Notice, the electric industry has long required generators as a condition of interconnection to operate within a specified power factor range, in many cases without

separately identified compensation for such operation.[1] That is, compensation may be part of a bundled rate, either at retail or at wholesale. Given the changes that have occurred and are occurring within the electric industry (e.g., more disaggregated ownership of generation resources and increased entry by non-conventional technologies), there is a question concerning obligation and compensation of reactive supply and frequency response.

- In light of changed circumstances and with regard to wholesale power sales, should there now be payment for reactive power capability within the power factor range required in interconnection agreements?
    - If there should be a payment, should payment be cost based, determined through a competitive solicitation, or through some other market-based mechanism?
    - If there should be a payment, should all generators in a region be paid the same rate, or should the rate vary by the type, size, location, or capability of each generator?

[1] *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), at P 546, *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 416, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

- If there should not be a payment, how does the Commission reconcile the fact that some generators may be recovering the costs associated with providing reactive power capability through bundled rates and other generators providing the service do not have the opportunity to do so?
- Should the requirement to provide the service be contingent upon opportunity for cost recovery?
- Why do some regions pay for reactive power and some not? Are there inherent differences in the way the systems were planned and constructed, the types of loads, the acceptable range of voltage, the amount of reactive power that is absorbed by the loads, or transmission system capabilities?

- How should cost-based payments for reactive power capability be structured?
  - Should the Commission continue to use the AEP methodology?[2]
  - Is there sufficient transparency of existing cost-based payments to generators?
  - Could the costs associated with transmission facilities that provide dynamic reactive power be used to help develop a generic cost-based reactive power rate that could be applied to all reactive power resources?

[2] *American Electric Power Service Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999).

- What are the obligations of generators receiving payment for reactive power capability within the required power factor range?
    - Can the system operator require a generator to start up only to provide reactive power?

Roundtable Participants

- Doug Hils, Director, Midwest System Operations, Duke Energy (Edison Electric Institute)
- Ryan Hanley, Director of Grid Engineering Solutions, SolarCity
- Dmitry Kosterev, Electrical Engineer, Bonneville Power Administration
- Stu Bresler, Vice President Market Operations, PJM Interconnection, L.L.C.
- Mike Jacobs, Senior Energy Analyst, Union of Concerned Scientists
- Vladimir Chadliev, Director-Global Grid Integration, First Solar, Inc.
- James Ginnetti, Senior Vice President External Affairs and Markets, EquiPower Resources Corp.

Frequency Response

The electric industry once routinely operated its generators with certain governor settings, most of those generators were turbine-generators with relatively fast response, and they were routinely dispatched below maximum output (to leave headroom for the governor to work with), so as to provide useful levels of frequency response from almost all synchronized generation, in many cases without providing a separate, unbundled payment for such operation. However, as with reactive power, the cost of maintaining that frequency response capability may have been recovered in bundled rates since most generation was owned by retail load serving entities.

- In light of changed circumstances, should there now be payment for appropriate performance (i.e. for providing frequency response service) or should some level of performance be more strongly required in interconnection agreements?
    - If there should be a payment, should it be cost based, determined through a competitive solicitation, or through some other market-based mechanism?
    - If there should be a payment, should all generators in a region be paid the same rate, or should the rate vary by the type, size, or capability of each generator?
    - If there should not be a payment, should all generators have the same requirement for providing frequency response service irrespective of whether the owner otherwise has access to rate recovery of the costs of maintaining such capability?

- Should resources be required to provide some minimum quantity of frequency response as part of existing obligations such as interconnection requirements, and only be paid when providing additional amounts of frequency response to meet a shortfall in achieving the balancing authority area's frequency response obligation?

- Whether or not payments are made for providing frequency response service, should there be penalties assessed against resources that absorb frequency response (i.e., worsen responsiveness)?

- How should cost-based payments for frequency response service be structured?

  - Would the nature of frequency response service require a two-part payment; e.g., a capacity payment to maintain needed headroom and a performance payment for actual response?

  - Because a resource selling frequency response service would need to forego energy sales in order to maintain needed headroom for governor response, should a cost-based frequency response rate incorporate a lost opportunity cost payment reflecting that energy market impact?

- Should the Commission create a new frequency response ancillary service in the OATT, subdivide the existing Schedule 3 Regulation and Frequency Response ancillary service into two services with separate cost-based rates, or leave stand-

alone frequency response service entirely to market mechanisms in the bilateral and organized markets?

- If frequency response service is either recognized through the OATT or incorporated into an RTO/ISO organized market, how should self-supply of frequency response be established and measured?

Roundtable Participants

- Doug Hils, Director, Midwest System Operations, Duke Energy (Edison Electric Institute)
- Dmitry Kosterev, Electrical Engineer, Bonneville Power Administration
- Sandip Sharma, Supervisor, Electric Reliability Council of Texas
- Erik Ela, Senior Engineer, National Renewable Energy Laboratory
- Clyde Loutan, Senior Advisor Renewable Energy Integration, California ISO
- Stu Bresler, Vice President Market Operations, PJM Interconnection, L.L.C.
- James Ginnetti, Senior Vice President External Affairs and Markets, EquiPower Resources Corp.
- Ryan Hanley, Director of Grid Engineering Solutions, SolarCity

11:50 a.m. – 12:50 p.m. Break For Lunch

12:50 p.m. – 2:50 p.m. Afternoon Roundtable Discussion: Market Power Screening Concerns Associated With Reactive Supply, Regulation, and Frequency Response Services.

The Commission analyzes horizontal market power for sales of energy and capacity using two indicative screens, the wholesale market share screen and the pivotal supplier screen, to identify sellers that raise no horizontal market power concerns and can otherwise be considered for market-based rate authority. The wholesale market share screen measures whether a seller has a dominant position in the relevant geographic market in terms of the number of megawatts owned or controlled by the seller, as compared to the uncommitted capacity of the entire market. A seller whose share of the relevant market is less than 20 percent during all seasons passes the wholesale market share screen. The pivotal supplier screen evaluates the seller's potential to exercise horizontal market power based on the seller's uncommitted capacity at the time of annual peak demand in the relevant market. A seller satisfies the pivotal supplier screen if its uncommitted capacity is less than the net uncommitted supply in the relevant market.

A major focus of Order No. 784 was identifying the circumstances under which the existing market power screens for sales of energy and capacity could be applied without significant modification to sales of specific ancillary services.[3] Below we

[3] *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, 78 Fed. Reg. 46,178 (July 30, 2013), FERC Stats. & Regs. ¶ 31,349, at PP 20-61 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

discuss relevant issues as they relate to potential market-based rate sales of reactive power supply, regulation, and frequency response services.

Reactive Supply

For sales of reactive power, Order No. 784 was unable to identify appropriate assumptions that would enable use of the existing market power screens. To the extent market-based sales of reactive power make sense, the following questions are meant to further explore this issue.

- To what extent can entities sell reactive power across balancing areas in a manner consistent with the assumptions reflected in existing market power screens for energy and capacity?
    - Regarding the assumption of the existing screens that all uncommitted generation resources can compete with each other, what type of equipment is needed to allow the various types of generation resource in the existing market power screens to provide or absorb reactive power, what types of resources and what proportion in the market typically have such equipment installed, and how easy and cost-effective is it to retrofit such equipment after initial construction for those that do not typically come with it installed?

- Regarding the default geographic market reflected in the existing screens, under typical system conditions, would reactive power produced or consumed in one area of a multi-balancing authority area market necessarily be useful (and thus competitive) in another remote area of the same market? Similarly, would reactive power produced or consumed at the sites of retail load on the distribution grid necessarily be useful, and thus competitive, in a remote part of the same default geographic market?

- How would the relevant geographic market for reactive power be established?

- How can a market power screen be developed to consider transmission, distributed resources, and demand side alternatives to generator-supplied reactive power, and how would the distance limitations identified in response to the questions above, if any, be dealt with by such a market power screen?

Regulation Service

In Order No. 784, the Commission evaluated whether the existing market power screens for sales of energy and capacity could be applied to the sale of Schedule 3 Regulation and Frequency Response service without significant modification.[4] The Commission discussed Schedule 3 as a single service in Order No. 784, which is focused primarily on Automatic Generation Control (AGC)-based regulation. However,

[4] Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 59-61.

frequency response is distinct from regulation.[5] Frequency response involves the autonomous, automatic, and rapid reaction of an individual turbine-generator or other resource to change its output to rapidly dampen changes in frequency. In contrast, regulation is produced from either manual or automated dispatch (through AGC) from a centralized system.[6] In Order No. 888, the Commission found that governor-based autonomous frequency response did not merit a separate ancillary service because at the time the same resources that responded to regulation signals also provided governor response under then-standard industry practices.[7] As a result, the language of Order No. 888 discussing Schedule 3 was focused primarily on AGC-based central dispatch,[8] and we will treat regulation service in the same way in this workshop. We will also assume

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[5] As used herein, frequency response refers to primary frequency response and regulation refers to secondary frequency response.

[6] *See Frequency Response and Frequency Bias Setting Reliability Standard*, Order No. 794, 146 FERC ¶ 61,024, at PP 8-9 (2014).

[7] "While the services provided by Regulation Service and Frequency Response Service are different, they are complimentary services that are made available using the same equipment." *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,707 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[8] "Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generation control equipment)…." *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,960, Schedule 3-Regulation and Frequency Response Service.

that RTO/ISO regulation markets do not need further refinement at this time, and therefore focus our regulation service discussion on bilateral regulation markets outside of RTOs and ISOs.

Because of certain technical and geographic issues associated with regulation service, Order No. 784 did not remove the general prohibition on third-party market-based sales of that service to a public utility transmission provider that is purchasing to satisfy its OATT requirement to offer ancillary services to its customers. However, arguments were raised in some comments that the equipment upgrades needed to enable an existing resource to begin selling this service may not be excessively expensive or time consuming. Additionally, while regulation service requires dispatch on multi-second intervals, which would mean that the first-tier resources considered in the existing market power screens would probably require special scheduling provisions like dynamic scheduling or pseudo-ties in order to supply this service to the destination market, some commenters argued that some regions are developing the needed agreements and infrastructure to make such special scheduling arrangements more widely available. The following questions are meant to further explore these two claims.

- To what extent can entities sell regulation service across balancing areas in a manner consistent with the assumptions reflected in existing market power screens for energy and capacity?

- Regarding the assumption of the existing screens that all uncommitted generation resources can compete with each other, what type of equipment and communications are needed to allow the various types of generation resource in the existing market power screens to provide regulation service, what types of resources and what proportion in the market typically have such equipment installed, and how easy and cost-effective is it to retrofit such equipment and communications after initial construction for those that do not typically come with it installed?

- Regarding the default geographic market reflected in the existing screens, are special scheduling provisions like dynamic scheduling or pseudo-ties needed to permit regulation service sellers in a first-tier balancing area to compete with sellers in neighboring balancing areas, and if so, how easy is it to secure such special scheduling provisions?

- How would the relevant geographic market for regulation service be established?

- How can a market power screen be developed to consider transmission, distributed resources, and demand side alternatives to generator-supplied regulation service, and if any of these new competitors are located at the sites of retail load on the distribution grid, would the regulation service they provide be useful throughout the default geographic market incorporated in the existing market power screens?

Frequency Response Service

As discussed above, frequency response service, if provided on a stand-alone basis, would have very different characteristics from regulation service. A significant difference would be the fact that the response would be automatic and autonomous, requiring no dispatch signal from any centralized system. The following questions are meant to explore what if any impact this and other differences might have on the screening of market power for sales of this product.

- To what extent can entities sell autonomous frequency response service across balancing areas in a manner consistent with the assumptions reflected in existing market power screens for energy and capacity?
    - Regarding the assumption of the existing screens that all uncommitted generation resources can compete with each other, what type or settings of equipment or changes to their dispatch and operation are needed to allow the various types of generation resources in the existing market power screens to provide autonomous frequency response service, what types of resources and what proportion in the market typically have such equipment installed, and how easy and cost-effective is it to retrofit such equipment after initial construction for those that do not typically come with it installed?

- Also, would the requirement for rapid reaction mean that not all of the available resources that would otherwise be incorporated in the existing market power screens for sales of energy and capacity should be considered capable of competing to provide frequency response service?
    - If so, are there any relatively simple adjustments that could be made to the existing market power screens to address this issue (e.g., an assumption that particular classes of generation should not be viewed as available capacity with respect to frequency response service)?
- Regarding the default geographic market reflected in the existing screens, would the autonomous nature of frequency response service mean that no special scheduling provisions like dynamic scheduling or pseudo-ties are needed to permit sellers in a first-tier balancing area to compete with sellers in neighboring balancing areas?

- How would the relevant geographic market for frequency response service be established?

- How can a market power screen be developed to consider transmission, distributed resources, and demand side alternatives to generator-supplied frequency response service? If any of these competitors are located at the sites of retail load on the distribution grid, would the frequency response service they provide be useful

throughout the default geographic market incorporated in the existing market power screens?

Roundtable Participants

- Doug Hils, Director, Midwest System Operations, Duke Energy (Edison Electric Institute)
- Dmitry Kosterev, Electrical Engineer, Bonneville Power Administration
- Nick Miller, Director Energy Applications & Systems Engineering, GE Energy
- David Hunger, Vice President, Charles River Associates
- Clyde Loutan, Senior Advisor Renewable Energy Integration, California ISO
- James Ginnetti, Senior Vice President External Affairs and Markets, EquiPower Resources Corp.
- Ryan Hanley, Director of Grid Engineering Solutions, SolarCity

2:50 p.m. – 3:00 p.m. Wrap Up

[FR Doc. 2014–09948 Filed 4–30–14; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP14–728–000]

El Paso Natural Gas Company, L.L.C.; Notice of Petition for Declaratory Order

Take notice that on April 10, 2014, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2014), El Paso Natural Gas Company, L.L.C. (EPNG) filed a petition for a Declaratory Order seeking guidance concerning how EPNG is to evaluate competing bids in a right-of-first-refusal open season where the shipper currently holding the capacity is subject to Article 11.2 of EPNG's 1996 settlement and other potential bidders for the capacity are not, as more fully explained in the Petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an

eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on May 12, 2014.

Dated: April 14, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–09949 Filed 4–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP14–732–000]

Pivotal LNG, Inc.; Notice of Petition for Declaratory Order

Take notice that on April 11, 2014, Pivotal LNG, Inc. (Pivotal LNG), pursuant to section 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2013), filed a Petition for Declaratory Order seeking a declaratory ruling from the Commission that certain existing liquefied natural gas (''LNG'') production facilities (''LNG production Facilities''), not otherwise subject to the Commission's jurisdiction under Section 3 of the Natural Gas Act (''NGA''), 15 U.S.C. 717b (2012), would not be deemed ''LNG terminal[s],'' as that term is defined in Section 2(11) of the NGA, *id.* 717a(11), by virtue of producing LNG that subsequently may be transported in interstate commerce by waterborne vessel. Also, the Petition seeks a finding that certain proposed LNG transactions wherein Pivotal LNG sells LNG that is: (i) Sourced from one of the LNG Production Facilities or from a non-affiliated LNG supplier; (ii) transported by Pivotal LNG, an affiliate, or a third party in intrastate or interstate commerce within the contiguous United States by means including (but not limited to) truck, rail, or waterborne vessel, but excluding interstate pipeline; and (iii) subsequently transported by a third party in interstate commerce, by waterborne vessel, for resale and ultimate consumption in a non-contiguous U.S. state or territory as vehicular fuel, other end-use fuel, or feedstock do not constitute jurisdictional sales or transportation of natural gas in interstate commerce subject to the Commission's jurisdiction under NGA Sections l(b) and 7, *id.* 717(b), 717f.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 21, 2014.

Dated: April 14, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–09950 Filed 4–30–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0311; FRL—9908–73–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Sewage Sludge Incinerators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Emission Guidelines for Sewage Sludge Incinerators (40 CFR part 60, Subpart MMMM) (Renewal)'' (EPA ICR No. 2403.03, OMB Control No. 2060–0661), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed extension of the ICR, which is currently-approved through May 31, 2014. Public comments were previously requested via the **Federal Register** (78 *FR* 35023) on June 11, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before June 2, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0311, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs

Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: This supporting statement addresses information collection activities imposed by the Sewage Sludge Incineration (SSI) Unit Emission Guidelines Subpart MMMM. The guidelines do not apply directly to SSI unit owners and operators. The guidelines can be thought of as model regulations that States use in developing State plans to implement the emission guidelines. If a State does not develop, adopt, and submit an approvable State plan, the Environmental Protection Agency (EPA) must develop a Federal plan to implement the emission guidelines. This ICR presents the burden to respondents (owners or operators of SSI units) and the Designated Administrator (State or Federal Government) that will be imposed by State plans developed to implement the emission guidelines. Respondents are owners or operators of existing SSI units, including fluidized bed or multiple hearth units.

Form Numbers: None.

Respondents/affected entities: Owners and operators of sewage sludge incinerators.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart MMMM).

Estimated number of respondents: 110 (total).

Frequency of response: Initially, semiannually, and annually.

Total estimated burden: 29,116 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,580,390 (per year), which includes $4,732,368 annualized capital and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated respondent burden compared with the ICR currently approved by OMB. The decrease occurred because the standard has been in effect for more than three years and the requirements are different during initial compliance as compared to on-going compliance. The previous ICR reflected those burdens and costs associated with the initial activities for subject facilities. This includes purchasing monitoring equipment, conducting performance test(s) and establishing recordkeeping systems. This ICR, by in large, reflects the on-going burden and costs which include continuously monitoring of pollutants and the submission of annual reports. However, note there is an adjustment increase in the total respondent costs due to an increase in labor rates.

In addition, there is a slight increase in the Agency cost due to a correction in travel expense. This ICR corrects the number of hours required for observing each stack test from 30 hours to 48 hours.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–09946 Filed 4–30–14; 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, 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 May 8, 2014, from 9:00 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. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

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. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*
- April 10, 2014

B. *New Business*
- Capital—Tier 1/Tier 2 Framework—Proposed Rule

C. *Reports*
- Ethics Update Report
- Farm Credit System Building Association Auditors' Report on 2013 Financial Audit

Closed Session *

- Office of Secondary Market Oversight Quarterly Report

Executive Session **

- FCS Building Association Auditors' Report

Dated: April 29, 2014.

Mary Alice Donner,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 2014–10081 Filed 4–29–14; 4:15 pm]

BILLING CODE 6705–01–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: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of

* Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

** Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(2).

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 30, 2014. 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 Cathy Williams, FCC, via email *PRA@fcc.gov* <*mailto:PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov* <*mailto: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 No.: 3060–0695.

Title: Section 87.219, Automatic Operations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 125 respondents and 125 responses.

Estimated Time per Response: 0.7 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 154, 303 and 307.

Total Annual Burden: 88 hours.

Annual Cost Burden: None.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: If airports have control towers of Federal Aviation Administration (FAA) flight service stations and more than one licensee, and wants to have an automated aeronautical advisory station (Unicom), this rule requires that they must write an agreement and keep a copy of the agreement with each licensee's station authorization. This information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating Unicom.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–09937 Filed 4–30–14; 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: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information 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 June 30, 2014. 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 Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: P*RA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 15.407(j), U–NII Operator Filing Requirement.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 17 Respondents; 17 Responses.

Estimated Time per Response: 32 hours.

Frequency of Response: On occasion one time reporting, recordkeeping 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. Sections 154(i), 301, 302a, 303(e), 303(f), 303(g) and 303(r).

Total Annual Burden: 544 hours.

Total Annual Costs: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full year three year clearance from them. The Commission is requesting approval of this information collection.

On March 31, 2014, the Commission adopted a First Report and Order, *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) in the 5 GHz Band,* ET Docket No. 13–49, FCC 14–30. Section 15.407(j) of the Commission's rules established filing requirements for U–NII operators that deploy a collection of more than one

thousand outdoor access points with the 5.15–5.25 GHz band, parties must submit a letter to the Commission acknowledging that, should harmful interference to licensed services in this band occur, they will be required to take corrective action. Corrective actions may include reducing power, turning off devices, changing frequency bands, and/or further reducing power radiated in the vertical direction. This material shall be submitted to Laboratory Division, Office of Engineering and Technology, Federal Communications Commission, 7435 Oakland Mills Road, Columbia, MD 21046 Attn: U–NII Coordination, or via Web site at *https://www.fcc.gov/labhelp* with the SUBJECT LINE: ''U–NII–1 Filing''.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–09938 Filed 4–30–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections 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 burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 OMB control number.

DATES: Written comments should be submitted on or before June 2, 2014. 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 email to *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov <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: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR Sections 64.703(a), 64.709, 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,418 respondents; 11,250,150 responses.

Estimated Time per Response: 1 minute (.017 hours)–50 hours.

Frequency of Response: Annual and on-occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at 47 U.S.C. 226, Telephone Operator Services, Public Law 101–435, 104 Stat. 986, codified at 47 CFR 64.703(a) Consumer Information, 64.709 Informational Tariffs, and 64.710 Operator Services for Prison Inmate Phones.

Total Annual Burden: 205,023 hours.

Total Annual Cost: 126,750.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.710 imposes similar requirements on OSPs to inmates at correctional institutions. 47 CFR 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. These rules help to ensure that consumers receive information necessary to determine what the charges associated with an OSP-assisted call will be, thereby enhancing informed consumer choice in the operator services marketplace.

OMB Control Number: 3060–1182.

Title: Section 64.604(c)(9), Emergency Interim Rule for Registration and Documentation of Disability for Eligibility to Use IP Captioned Telephone Service, CG Docket Nos. 13–24 and 03–123.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents and Responses: 12,004 respondents; 24,000 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 1 hour.

Frequency of Response: On-going reporting requirement; One-time reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is Sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals; The Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, enacted on July 26, 1990.

Total Annual Burden: 18,000 hours.

Total Annual Cost: $600,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not involve the collection of personally identifiable information by the government from individuals.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: The Commission seeks to extend OMB approval of OMB Control Number 3060–1182 for a period of three years. The interim rules containing these collections, which were adopted in the IP CTS Interim Order, published at 78 FR 8032, February 5, 2013, will remain in effect until the corresponding final rules, adopted by the Commission in the IP CTS Reform Order, published at 78 FR 53684, August 30, 2013, take effect. On December 6, 2013, the United States Court of Appeals for the District of Columbia Circuit granted in part a motion by Sorenson Communications, Inc. (Sorenson) seeking a stay of certain of the final rules. See Sorenson Communications, Inc. and *CaptionCall, LLC* v. *FCC,* D.C. Cir., No. 13–1246, December 6, 2013, at 1–2 (Stay Order). Specifically, the Court stayed ''the rule adopted by the Commission prohibiting compensation to providers for minutes of use generated by equipment consumers received from providers for free or for less than $75.'' For the purpose of maintaining the status quo until the court issues a final ruling in court proceedings No. 13–1246 and consolidated No. 13–1122, the Commission therefore seeks to extend OMB approval of OMB Control Number 3060–1182 for a period of three years.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–09936 Filed 4–30–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request Re: Regulatory Capital Rules

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. As part of its continuing effort to reduce paperwork and respondent burden, the FDIC invites the general public and other Federal agencies to take this opportunity to comment on an extension, without change, of an existing information collection. On February 24, 2014 (79 FR 10150), the FDIC requested comment for 60 days on extension for three years of its information collection entitled *Regulatory Capital Rules* (OMB No. 3064–0153). No comments were received on the proposal to extend. The FDIC hereby gives notice of submission to OMB of its request to extend the collection.

DATES: Comments must be submitted on or before June 2, 2014.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: This notice requests public comment on the FDIC's request for extension of OMB's approval of the Regulatory Capital Rules information collection more fully described below. OMB approved the ICR under emergency procedures for review and clearance in accordance with the PRA. The FDIC is not proposing any changes to the existing ICR at this time. A description of the collection and the current burden estimates follows.

Proposal to extend the following currently approved collection of information:

Title: Regulatory Capital Rules.

OMB Number: 3064–0153.

Affected Public: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

Estimated Number of Respondents: Advanced approaches—8; Minimum capital ratios—4,571; Standardized approach—4,571.

Frequency of Response: Occasional.

Estimated Time per Response: Varied.

Total Estimated Annual Burden: 737,275 hours.

General Description of Collection: This collection comprises the disclosure and recordkeeping requirements associated with minimum capital requirements and overall capital adequacy standards for insured state nonmember banks, state savings associations, and certain subsidiaries of those entities. The capital standards are consistent with agreements reached by the Basel Committee on Banking Supervision (BCBS) in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,'' and with section 171 of the Dodd-Frank Act, which requires establishment of minimum risk-based and leverage capital requirements, and with section 939A of the Dodd-Frank Act, which requires the use of alternatives to credit ratings for calculating risk-weighted assets. The data is used by the FDIC to evaluate capital before approving various applications by insured depository institutions, to evaluate capital as an essential component in determining safety and soundness, and to determine whether an institution is subject to prompt corrective action provisions.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 28th day of April 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–09934 Filed 4–30–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE & TIME: Tuesday May 6, 2014 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–10123 Filed 4–29–14; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2014–N–06]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-day Notice of Submission of Information Collection for Approval From the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the existing information collection ''Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans,'' which has been assigned control number 2590–0004 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which expired on March 31, 2014.

DATES: Interested persons may submit comments on or before June 30, 2014.

Comments: Submit written comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, *Fax:* (202) 395–6974, *Email address: OIRA_Submission@omb.eop.gov.* Please also submit them to FHFA using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *Regcomments@fhfa.gov* to ensure timely receipt by the agency.
- *Email: Regcomments@fhfa.gov.* Please include Proposed Collection; Comment Request: ''Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans, (No. 2014–N–06)'' in the subject line of the message.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: ''Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans, (No. 2014–N–06).''

We will post all public comments we receive without change, including any personal information you provide, such as your name, address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at 202–649–3804.

FOR FURTHER INFORMATION CONTACT: David L. Roderer, Senior Financial Analyst, 202–408–2540 (not a toll-free number), *david.l.roderer@fhfa.gov,* or by regular mail at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

FHFA's Monthly Survey of Rates and Terms on Conventional 1-Family Non-Farm Mortgage Loans, commonly referred to as the ''Monthly Interest Rate Survey'' or ''MIRS,'' is a monthly survey of mortgage lenders that solicits information on the terms and conditions on all conventional, single-family, fully amortized, purchase-money mortgage loans closed during the last five working days of the preceding month. The MIRS collects monthly information on interest rates, loan terms, and house prices by property type (*i.e.,* new or previously occupied), by loan type (*i.e.,* fixed- or adjustable-rate), and by lender type (*i.e.,* mortgage companies, savings associations, commercial banks, and savings banks), as well as information on 15-year and 30-year fixed-rate loans. In addition, the survey collects quarterly information on conventional loans by major metropolitan area and by Federal Home Loan Bank district. The MIRS does not collect information on loans insured by the Federal Housing Administration (FHA) or guaranteed by the Veterans Administration (VA), loans secured by multifamily property or manufactured housing, or loans created by refinancing another mortgage. The MIRS is the most comprehensive source of information on conventional mortgage rates and terms in the United States.

The MIRS originated with one of FHFA's predecessor agencies, the former Federal Home Loan Bank Board (FHLBB) in the 1960s. Among other things, the FHLBB used data collected through the MIRS to derive its National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders (ARM Index), which was used by lenders to set mortgage rates on adjustable rate mortgages (ARMs). No statutory or regulatory provision explicitly required the FHLBB to conduct the MIRS. However, for a period in the early 1980s, federally chartered savings institutions were required to use the MIRS-derived ARM Index in setting interest rates on ARMs. Few, if any, loans from that period remain. After 1981, an unknown but likely very small proportion of lenders used the ARM Index to set interest rates on their new ARMs.

In 1989, Congress enacted the Financial Institutions Reform Recovery and Enforcement Act (FIRREA), which abolished the FHLBB and created the Federal Housing Finance Board to assume many of the FHLBB's powers and responsibilities. FIRREA required

the Chairperson of the Finance Board to ''take such actions as may be necessary'' to ensure that the ARM Index prepared by the FHLBB continued to be available.[1] Although there was no explicit reference in FIRREA to the continuation of the MIRS, the Finance Board viewed that statutory requirement to continue to produce the ARM Index as a mandate to continue also to conduct the MIRS, from which the data used to derive the ARM Index was obtained. The Finance Board conducted the MIRS and produced the ARM Index from 1989 through 2008, when Congress abolished that agency and transferred its responsibilities to the newly-created FHFA.[2]

Since 2008, FHFA has continued to conduct the MIRS and produce the ARM Index.[3] By statute, MIRS data is one of the factors that FHFA is required to consider in assessing the national average one-family house price for purposes of periodically adjusting the conforming mortgage loan limits of Fannie Mae and Freddie Mac.[4] In addition, statutes in several states and U.S. territories, including California, Michigan, Minnesota, New Jersey, Wisconsin, and the Virgin Islands, refer to, or rely upon, the MIRS.[5]

Many lenders use FHFA's ARM Index, derived from MIRS data, to set interest rates on fixed rate loans. In addition, businesses, trade associations, and government agencies at both the federal and state level rely upon the MIRS data for various business and regulatory purposes. For example, economic policy makers have used the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs, and initial fees and charges on mortgage loans. Other federal banking agencies, such as the Board of Governors of the Federal Reserve System and the Council of Economic Advisors, have used the MIRS results for research purposes.

The OMB number for the information collection is 2590–0004, which expired on March 31, 2014. The likely respondents are mortgage lenders in the United States.

B. Burden Estimate

FHFA estimates the total annual number of respondents at 70 with 6 responses per respondent (because not every respondent will have new mortgage loans to report every month). The estimate for the average time per response is 20 minutes. The estimate for the total annual hour burden is 140 hours (70 respondents × 6 responses × 0.33 hours).

C. Comment Request

FHFA published a request for public comments regarding this information collection in the **Federal Register** on January 30, 2014. *See* 78 FR 24420 (Jan. 30, 2014). The 60-day comment period closed on March 31, 2014. FHFA received one comment letter, from the Bureau of Economic Analysis of the U.S. Department of Commerce (BEA). In its letter, BEA states that it strongly supports FHFA's continued collection of data for the MIRS, noting that the data are ''crucial to key components of BEA's economic statistics.'' Specifically, BEA uses MIRS data to track contract rates of interest and to estimate financial costs as part of its estimate of rental income of persons in the national income and product accounts (NIPAs). Indirectly, the data are used in the industry annual and quarterly Input-Output and GDP-by-Industry accounts in the estimates of gross output and value added for the real estate sub-sector.

This notice requests written comments on: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) The accuracy of FHFA's estimates of the burdens of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on survey respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: April 24, 2014.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2014–09997 Filed 4–30–14; 8:45 am]

BILLING CODE 8070–01–P

[1] *See* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law 101–73, Title IV, 402(e)(3), 103 Stat. 183, *codified at* 12 U.S.C. 1437 note. The statute permitted the Finance Board to substitute a different ARM index after notice and comment, but only if the new index was based upon data substantially similar to that of the original ARM Index and substitution of the new ARM index would result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaced the existing ARM Index. *See* FIRREA 402(e)(4).

[2] *See* Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, Div. A, Title III, section 1312, 122 Stat. 2794, *codified at* 12 U.S.C. 4511 note.

[3] The MIRS and the ARM Index are described at 12 CFR 906.5.

[4] *See* 12 U.S.C. 4542.

[5] *See, e.g.,* Cal. Civ. Code sections 1916.7 and 1916.8 (mortgage rates); Mich. Comp. Laws section 445.1621(d) (mortgage index rates); Minn. Stat. section 92.06 (payments for state land sales); N.J. Rev. Stat. 31:1–1 (interest rates); Wis. Stat. sectioni 138.056 (variable loan rates); V.I. Code Ann. tit. 11, section 951 (legal rate of interest).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 16, 2014.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Arthur Temple, III, Lufkin, Texas, individually and as trustee of the Arthur Temple, III Testamentary Trust, Arthur Temple, III Generation Skipping Trust, and Arthur & Mary Temple Trust Part II; Charlotte Ann Temple, St. Helena, California, individually and as trustee of the Charlotte Temple Family Trust, and Charlotte Ann Temple Generation Skipping Trust; Hannah Temple, Austin, Texas; John Hurst, Dripping Springs, Texas; Whitney Temple Grace, West Lake Hills, Texas; Susan Temple, Wilson, Wyoming; Arthur Spencer, St. Helena, California, individually and as trustee of the Charlotte Ann Temple Generation Skipping Trust; Christopher Spencer, St. Helena, California; William H. Spencer, Washington, DC; Katherine Spencer Zelazny, St. Helena, California, as trustee of the Zelazny Family Trust; Wayne Corley, Lufkin, Texas, as trustee of the Charlotte Ann Temple Testamentary Trust and Arthur Temple, III Testamentary Trust; CAT AT Family, L.P,* St. Helena, California; to collectively as a group acting in concert to retain voting shares of Diboll State Bancshares, Inc., and thereby indirectly retain voting shares of First Bank and Trust East Texas, both in Diboll, Texas.

2. *Legend Bank Employee Stock Ownership Plan and 401(k) Plan (As Amended and Restated Generally Effective as of June 19, 2012),* Bowie, Texas; to retain, and to acquire, additional voting shares of Legend Bancorp, Inc., and thereby indirectly retain, and acquire additional voting shares of Legend Bank, N.A., Bowie, Texas.

Board of Governors of the Federal Reserve System, April 28, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–09957 Filed 4–30–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 18–19, 2014

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 18–19, 2014.[1]

Consistent with its statutory mandate, the Federal Open Market Committee seeks monetary and financial conditions that will foster maximum employment and price stability. In particular, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to undertake open market operations as necessary to maintain such conditions. Beginning in April, the Desk is directed to purchase longer-term Treasury securities at a pace of about $30 billion per month and to purchase agency mortgage-backed securities at a pace of about $25 billion per month. The Committee also directs the Desk to engage in dollar roll and coupon swap transactions as necessary to facilitate settlement of the Federal Reserve's agency mortgage-backed securities transactions. The Committee directs the Desk to maintain its policy of rolling over maturing Treasury securities into new issues and its policy of reinvesting principal payments on all agency debt and agency mortgage-backed securities in agency mortgage-backed securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, April 10, 2014.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2014–09905 Filed 4–30–14; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on March 18–19, 2014, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2014.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *AHB Bancshares, Inc.,* Clovis, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of American Heritage Bank, Clovis, New Mexico.

2. *Turner Bancshares, Inc.,* Abernathy, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Algodon de Calidad Bancshares, Inc., and The First State Bank, both in Abernathy, Texas.

Board of Governors of the Federal Reserve System, April 28, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–09955 Filed 4–30–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Teleconference

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Teleconference.

Time and Date: 3:00 p.m.–5:00 p.m. (EDT) May 15, 2014.

Place: Teleconference—scheduled to begin at 3:00 p.m. Eastern Daylight Savings Time. To participate in the teleconference, please use the following url *http://www.ncvhs.hhs.gov/* to take you to the NCVHS homepage where registration information and the link to join the call will be available.

Status: Open, however teleconference access limited only by availability of telephone ports. There will be a verbal comment period during the final 15 minutes of the teleconference. The public is also welcome to submit written comments in advance of the meeting to Terri Deutsch whose contact information is written below. Written comments received by May 13, 2014, will be included in the official record of the meeting.

Purpose: The NCVHS has been named in the Patient Protection and Affordable Care Act (ACA) of 2010 to review and make recommendations on several operating rules and standards related to HIPAA transactions. This meeting will support these activities in the development of a set of recommendations for the Secretary, as required by § 1104 of the ACA.

The purpose of this teleconference of the full committee of the NCVHS is to discuss and vote for approval three letters addressed to the Secretary of Health and Human Services. The matters to be discussed are: (1) Letter regarding the Electronic Standards for Public Health Information Exchange. The purpose of this letter is to provide observations and recommendations from the NCVHS regarding the current state of health informatics standards used by public health and population health programs; (2) A recommendation letter that focuses on the findings from the February 19, 2014 NCVHS Hearing on Prescriber Prior Authorization for Pharmacy Benefits, Health Plan Identifier (HPID), Electronic Fund Transfer (EFT)/Electronic Remittance Advice (ERA), and

Remaining Operating Rules; and (3) A letter emphasizing NCVHS's long-standing position on the adoption of ICD–10 code sets in the US.

Contact Person for More Information: Debbie Jackson, Interim Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4614; Written comments should be sent directly to Terri Deutsch, lead staff for the Standards Subcommittee, NCVHS, Centers for Medicare and Medicaid Services, Office of E-Health Standards and Services, 7500 Security Boulevard, Mailstop S2–26–17, Baltimore, Maryland 21244, email *Terri.Deutsch@cms.hhs.gov,* phone (410) 786–9462.

Program information as well as summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Dated: April 23, 2014.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and, Evaluation.

[FR Doc. 2014–09903 Filed 4–30–14; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0575]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On December 31, 2013, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on Expedited Programs for Serious Conditions—Drugs and Biologics'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0765. The approval expires on March 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09914 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1394]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Special Protocol Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Special Protocol Assessment'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 19, 2014, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on Special Protocol Assessment'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0470. The approval expires on March 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09913 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0338]

Center for Devices and Radiological Health: Experiential Learning Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) Center for Devices and Radiological Health (CDRH or Center) is announcing an invitation for participation in its Experiential Learning Program (ELP). The ELP provides a formal training mechanism for regulatory review staff to visit research, clinical, manufacturing, and health care facilities to observe firsthand how medical devices are designed, developed, and utilized. This training is intended to provide CDRH staff with an opportunity to observe the device development life cycle and provide a better understanding of the medical devices they review and the challenges faced throughout development, testing, manufacturing, and clinical use. The purpose of this document is to invite medical device industry, academia, and health care facilities to participate in this formal training program for FDA's medical device review staff, or to contact CDRH for more information regarding the program.

DATES: Submit either an electronic or written request for participation in this program by June 2, 2014. The request should include a description of your facility relative to product areas regulated by CDRH. Please include the Area of Interest (see table 1 or 2) that the site visit will demonstrate to CDRH staff, a contact person, site visit location, length of site visit, proposed dates, and maximum number of CDRH staff that can be accommodated during a site visit. Submitted proposals without this information will not be considered. In addition, please include an agenda outlining the proposed training for the site visit. A sample request and agenda are available on the ELP Web site: *http://www.fda.gov/downloads/ScienceResearch/*

ScienceCareerOpportunities/UCM392988.pdf and *http://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm*.

ADDRESSES: Submit either electronic requests to *http://www.regulations.gov* or written requests to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Latonya Powell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4448, Silver Spring, MD 20993–0002, 301–796–6965, FAX: 301–827–3079, *Latonya.powell@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

CDRH launched the ELP Pilot in 2012 and fully implemented the program (78 FR 19711, April 2, 2013) in 2013. The Center is responsible for ensuring the safety and effectiveness of medical devices marketed in the United States. Furthermore, CDRH assures that patients and providers have timely and continued access to high-quality, safe, and effective medical devices and safe radiation-emitting products. In support of this mission, the Center launched various training and development initiatives to enhance performance of its staff involved in regulatory review and in the premarket review process. CDRH is committed to advancing regulatory science; providing industry with predictable, consistent, transparent, and efficient regulatory pathways; and helping to ensure consumer confidence in medical devices marketed in the United States and throughout the world. This program is a collaborative effort to enhance communication and facilitate the premarket review process. Furthermore, CDRH is committed to understanding current industry practices, innovative technologies, and regulatory impacts and needs.

These formal training visits are not a mechanism for FDA to inspect, assess, judge, or perform a regulatory function (i.e., compliance inspection), but rather, are an opportunity to provide the CDRH review staff a better understanding of the products they review. Through this notice, CDRH is formally requesting participation from companies; academia; and clinical facilities, including those that have previously participated in the ELP; other FDA site visit programs; and new interested parties.

II. ELP

A. Experiential Learning Program

In this program, groups of CDRH staff will observe operations of medical device establishments, including research, manufacturing, academia, and health care facilities. The areas of focus and specific areas of interest for visits may include the following:

TABLE 1—AREAS OF INTEREST—MEDICAL DEVICES/TECHNOLOGY

Focus area	Specific areas of interest
Advanced simulation testing of mechanical ventilators	Performance testing of closed loop controlled ventilators using advanced physiologic simulation and computational modeling of the system (patient, ventilator, and sensor).
Assisted reproductive technology (ART) clinic setting	Structure and organization of an ART clinic; understanding the necessary specifications for ART devices (incubators, microscopes, media, micromanipulation, assisted reproduction lasers, and lab ware); cleaning and disinfection of reprocessed instruments in the ART clinic; aseptic techniques used in ART clinic.
Clinical use of orthopedic bone void filler devices	Observation of surgical procedures (posterolateral spine fusion, foot, ankle) utilizing bone void fillers.
Clinical use of physical medicine devices	Rehabilitation hospitals and programs; devices for treatment of pain (transcutaneous electrical nerve stimulator, diathermy), devices for muscle rehabilitation (powered muscle stimulators), devices intended to help restore function to patients (prosthetic limbs, functional electrical stimulators, orthoses).
Design and development of ablation devices, including electrosurgical units and accessories, electrosurgical/ultrasonic devices, microwave ablation devices.	Tumor ablation devices.
Electrophysiology (EP) catheters for diagnostic (mapping) and therapeutic (ablation) indications.	Observe manufacturing and testing of EP devices, with inclusion of design verification and returned product testing, as available.
Emerging manufacturing methods for orthopedic devices	3D printing, rapid manufacturing.
Endosseous implants	Computer Aided Design/Computer Aided Manufacturers produced elements, titanium bases, and various software programs utilized for forming abutments.
Hemodialysis devices used in the home environment	Home hemodialysis training program, hemodialysis machines, ''wetness'' detectors, hemodialysis blood access devices, water treatment.
Interface between the brain thought processes and the movement of medical devices to assist mobility.	Brain-computer interface manufacturer or laboratory.
Intraocular lenses (IOLs) and injectors	Development and manufacture of IOLs and injectors.
Manufacturing of polymeric sealants	Vascular surgical sealants.
Refractive lasers	Manufacturing; preclinical testing; femtosecond lasers.
Robotic surgery	Manufacturing of robotic surgical devices.

TABLE 2—AREAS OF INTEREST—IN VITRO DIAGNOSTIC AND RADIOLOGICAL DEVICES/TECHNOLOGY

Focus area	Specific areas of interest
Artificial pancreas related devices	Manufacturing of continuous glucose monitoring devices and insulin pumps.
Manufacturing of different types of human antibodies for the use of immunoassays.	Manufacturing of antibodies (monoclonal and polyclonal) for immunoassay tests.
Coagulation point of care and home use devices	Coagulation devices for point of care and home use (COUMADIN self-monitoring) utilizing whole blood and/or citrated plasma.
Immunohistochemistry for the diagnostic evaluation for cancer	Immunohistochemistry as an important tool in biomarkers detection and clinical practice.
Systems capable of running multiple analytes composed of a specimen collection and processing unit at satellite locations and data transmittal to a central location for analysis and quality control oversight.	Systems maintaining quality oversight of data generated at a distant location and transmitted digitally to another location for analysis.
Antimicrobial resistance detection and characterization	Observation and hands-on experience with reference methods and assays for phenotypic and non-phenotypic-based methods for determining antimicrobial resistance.
Diagnostic x-ray imaging devices	Site visits to user facilities.
Next generation sequencing/single-nucleotide polymorphism (SNP) arrays and clinical genomics.	Next generation sequencing and/or SNP array devices in the clinical laboratory setting for molecular diagnostics used.

B. Site Selection

CDRH will be responsible for all CDRH staff travel expenses associated with the site visits. CDRH cannot provide funds to support the proposed training provided by the applicants to this program. Selection of potential facilities will be based on CDRH's priorities for staff training and resources available to fund this program. In addition to logistical and other resource factors, all sites must have a successful compliance record with FDA or another Agency with which FDA has a memorandum of understanding. If a site visit involves a visit to a separate physical location of another firm under contract to the applicant, that firm must agree to participate in the program and must also have a satisfactory compliance history.

III. Request for Participation

Identify requests for participation with the docket number found in the brackets in the heading of this document. Received requests may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09916 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0458]

Providing Information About Pediatric Uses of Medical Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Providing Information about Pediatric Uses of Medical Devices.'' FDA is issuing this guidance document to describe how to compile and submit the readily available pediatric use information required under the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Providing Information About Pediatric Uses of Medical Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1651, Silver Spring, MD 20993–0002, 301–796–6563; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, 301–827–6210.

I. Background

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (FDAAA) [1] (Pub. L. 110–85) amended the FD&C Act by adding, among other things, a new section 515A (21 U.S.C. 360e–1) of the FD&C Act. Section 515A(a) of the FD&C Act requires persons who submit certain medical device applications to include, if readily available: (1) A description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or

[1] Title III of FDAAA, which includes new section 515A, is also known as the Pediatric Medical Device Safety and Improvement Act of 2007.

cure and (2) the number of affected pediatric patients.

The purpose of this guidance document is to describe the type of information that FDA believes is readily-available to the applicant, and the information FDA believes should be included in a submission to meet the requirements of section 515A(a) of the FD&C Act. The draft version of this guidance was issued on February 19, 2013 (78 FR 11654).

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the requirements relating to the submission of information on pediatric subpopulations that suffer from the disease or condition that a device is intended to treat, diagnose, or cure. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''Providing Information about Pediatric Uses of Medical Devices,'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1801 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

On January 9, 2014, the Agency submitted a proposed collection of information entitled ''Providing Information About Pediatric Uses of Medical Devices Under Section 515A of the Federal Food, Drug and Cosmetic Act'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0762. The approval expires on March 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

This guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 814, subpart B have been approved under OMB control number 0910–0231 and the collections of information in 21 CFR part 814, subpart H have been approved under OMB control number 0910–0332.

V. Comments

Interested persons may submit either written comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09897 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0366]

Pilot Program for Center for Devices and Radiological Health Electronic Submission of Premarket Notification Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) Center for Devices and Radiological Health (CDRH) is announcing the availability of a CDRH eSubmissions Pilot Program (eSubmissions Pilot), which will be a new pathway that will guide the user through constructing and submitting their 510(k) submissions electronically without the requirement for submitting a hard copy or a compact disc. Participation in the eSubmissions Pilot is open to applicants whose device submissions would be reviewed in either of two branches in CDRH's Office of Device Evaluation (ODE), the Cardiac Diagnostic Devices Branch and the Peripheral Interventional Devices Branch, and is limited to unbundled, traditional 510(k) submissions for classified devices only. The eSubmissions Pilot will use the existing eSubmitter software for data acquisition and the existing Electronic Submission Gateway (ESG) for submitting (the eSubmissions Pilot is not intended to evaluate the existing eSubmitter software or the existing ESG). The eSubmissions Pilot is intended to provide industry and CDRH staff the opportunity to evaluate the 510(k) eSubmission with regards to the content (wording of questions, help text and guides), layout, and flow of the questions.

DATES: FDA will begin accepting requests to participate in the eSubmissions Pilot immediately. See the ''Procedures'' section for instructions on how to submit a request.

FOR FURTHER INFORMATION CONTACT: Patrick Axtell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1566, Silver Spring, MD 20993–0002, *eSubpilot@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has been moving toward transforming all regulatory submissions from paper to electronic methods. Since January 1999, FDA has accepted voluntary electronic submissions for certain types of regulatory submissions. FDA presently utilizes eSubmitter as a platform for submitting many types of submissions across several Centers. The eSubmitter platform contains templates for many types of submissions specific to those Centers and any template can be chosen by the user for constructing and submitting the appropriate type of submission. The 510(k) eSubmission program introduces a new template in eSubmitter for use in submitting 510(k)s to ODE.

FDA presently utilizes the ESG for the receipt and processing of many types of electronic regulatory submissions (*http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/default.htm*). The ESG automates the receipt, acknowledgment, routing and notification of electronic submissions via the Internet and meets FDAs standards of electronic information exchange.

The benefits to industry of this pilot program include, but are not limited to:

• Application of the ''Refuse to Accept Policy for 510(k)s'' (RTA) guidance document will be waived during the pilot (i.e., no submissions submitted via the software will be subject to an acceptance review as outlined in the RTA guidance).

• A guided interface that leads the sponsor through the process of constructing and submitting their 510(k) submissions. Built into the software are a number of features that ensure appropriate regulatory submission standards and recommendations are met or considered. Further, software features will prompt the inclusion of information that will avert some of the common procedural and administrative issues reviewers find during their reviews.

• The 510(k) eSubmissions are expected to decrease both the time spent by industry creating and submitting the 510(k).

• The 510(k) eSubmission process may also reduce the number of questions asked by FDA to which the applicant must officially respond.

• Since the 510(k) submission process will be completely electronic, time will not be lost in physical transit of the submission to FDA.

• The eSubmission software is intended to be a guide for users to instruct them as to what is required and recommended when submitting a 510(k), and will act as an aid for learning about the process. The use of electronic signatures will allow sponsors to legally sign documents without the need for printing, scanning and uploading.

The benefits to FDA include, but are not limited to:

• A reduction in required resources and time spent in processing the submission for review.

• Easier and faster reviews due to a standardized submission structure.

510(k) eSubmissions also support the Secretary's health IT priorities to harness information technology to improve health care and patient safety. The information learned and experiences gained from the eSubmissions Pilot will be used to optimize the process by which data and documents are obtained and ensure that the software infrastructure functions properly and electronic signatures work as intended.

II. CDRH eSubmissions Pilot

The eSubmissions Pilot presents a voluntary process to interested sponsors. This notice outlines: (1) The guiding principles underlying the eSubmissions Pilot; (2) the scope of the eSubmissions Pilot; and (3) the procedures CDRH intends to follow for the eSubmissions Pilot. The eSubmission process works similarly to commercially available tax preparation software packages such that it guides the sponsor through the submission process. Help text, links, embedded guides, and other aids are intended to assist the user and allow novice 510(k) submitters to navigate through the process of submitting a 510(k) submission. The software will consist of textual suggestions and questions designed to obtain all of the data FDA needs to review the submission and ensure no required data are omitted. FDA intends to collect data via text fields, checkboxes, dropdown menus, and, where it would be burdensome to collect data via these methods, file attachments. For example, FDA intends to collect much of the administrative data as well as basic information, such as the Indications for Use, via the software interface, not via file attachments. However, instruction manuals, software documentation, performance testing and other large documents may be attached.

A. Guiding Principles

The following basic principles underline the eSubmissions Pilot described in this document. CDRH intends that these principles create a common understanding between the sponsor and CDRH about the goals and parameters of the eSubmissions Pilot:

1. FDA believes the use of the eSubmission process will result in administratively complete 510(k) submissions and will not be conducting a separate acceptance review for the files submitted through the eSubmissions Pilot.

2. The eSubmission will serve as the only submission required; no other copies of the submission will be required.

3. The submission of Amendments and Supplements needs to be completed through the software during the eSubmissions Pilot. FDA encourages sponsor and reviewer interaction during the review process.

4. FDA will not publicly disclose participation of a sponsor in the eSubmissions Pilot, unless the sponsor consents or has already made this information public, or disclosure is required by law.

5. Participating in this eSubmissions Pilot does not guarantee clearance of a sponsor's 510(k) submission, nor is a sponsor precluded from withdrawing from the eSubmissions Pilot and pursuing a conventional 510(k)s submission and review through the current pathway.

6. Due to FDA resource issues, FDA intends to limit the eSubmissions Pilot to approximately 50 to 100 submissions. FDA may further limit the number of submissions from an individual firm as resources and eSubmissions Pilot needs allow.

7. An Extensible Markup Language (XML) Schema Definition (XSD) for the eSubmissions Pilot template was produced, and FDA intends to allow future submissions using alternative approaches to eSubmitter (e.g., via proprietary software purchased or produced by a medical device firm), as long as the submission is compliant with the XSD. If FDA commits to also receiving Regulated Product Submissions (RPS) in the future, FDA intends to expand this method of receipt to accept RPS packages. In addition, a different, more modern platform may be used for future eSubmissions other than eSubmitter.

B. Scope of eSubmissions Pilot

Voluntary participation in the eSubmissions Pilot is open to sponsors whose submissions are reviewed in ODE's Division of Cardiovascular Devices Cardiac Diagnostic Devices Branch or Peripheral Interventional Devices Branch. We encourage 510(k) sponsors of all device types, including those reviewed in other branches, to review the software interface and provide feedback via *http://www.regulations.gov* or the Division of Dockets Management (see Comments). The eSubmissions Pilot is limited to unbundled, traditional 510(k) submissions for classified devices only.[1]

C. Procedures

The following procedures have been developed to manage the CDRH eSubmissions Pilot effectively:

1. Under the eSubmissions Pilot, 510(k) submissions will be reviewed according to CDRH standard procedures.

2. eSubmission will be available for use and submission 24 hours a day and 7 days a week. However, if a 510(k) is received outside of normal business hours (Monday to Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays or dates the Federal Government is shutdown), the submission receipt date will be considered the next business day.

3. Participation in the eSubmissions Pilot does not affect submission user fee obligations. If the required user fee is not paid at the time of submission, the

[1] We are not accepting third party 510(k)s or Combination Products in the eSubmissions Pilot at this time.

receipt date will be the receipt date of a complete User Fee Coversheet via eSubmission. If a User Fee Coversheet is submitted outside of normal business hours (Monday to Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays or dates the Federal Government is shutdown), the User Fee Coversheet receipt date will be considered the next business day.

4. Volunteers interested in participating in the CDRH 510(k) eSubmissions Pilot should contact eSubmissions Pilot staff by email at *eSubpilot@fda.hhs.gov*. This email address should also be used to report issues and ask questions. General feedback and comments about the eSubmissions Pilot, 510(k) template, and process can be provided via *http://www.regulations.gov* or the Division of Dockets Management (see Comments).

5. Additional information on the CDRH 510(k) eSubmissions Pilot is available at *http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm221506.htm*.

III. Duration of the eSubmissions Pilot

FDA intends to accept requests for participation in the eSubmissions Pilot through September 30, 2014, or as resources and eSubmissions Pilot needs allow. Modifications to the CDRH 510(k) eSubmissions Pilot will be made available at *http://www.fda.gov/ForIndustry/FDAeSubmitter/ucm221506.htm* to all eSubmissions Pilot participants and stakeholders.

IV. Comments

Interested persons may submit electronic comments regarding the eSubmissions Pilot for CDRH Electronic Submission of Premarket Notification Submissions to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09912 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0021]

Actavis Totowa LLC, et al.; Withdrawal of Approval of Abbreviated New Drug Applications for Prescription Pain Medications Containing More Than 325 Milligrams of Acetaminophen; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 27, 2014 (79 FR 17163). The document withdrew approval of 108 abbreviated new drug applications (ANDAs) for prescription pain medications containing more than 325 milligrams (mg) of acetaminophen per dosage unit from multiple applicants, effective March 27, 2014. The document failed to withdraw approval of ANDAs 040825, 040822, and 040824, held by Ranbaxy Laboratories Inc. and Ranbaxy Inc., 600 College Rd. East, Princeton, NJ 08540, and ANDA 040182, held by Pharmaceutical Associates, Inc., 201 Delaware St., Greenville, SC 29605. The holders of these applications have voluntarily requested that approval of these applications be withdrawn and have waived their opportunity for a hearing. FDA confirms the withdrawal of approval of ANDAs 040825, 040824, 040822, and 040182.

FOR FURTHER INFORMATION CONTACT: Rachel Turow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–5094.

SUPPLEMENTARY INFORMATION: In FR Doc. 2014–06801, appearing on page 17163, in the **Federal Register** of Thursday, March 27, 2014, the following correction is made:

On page 17166, in table 1, the following entries are added in alphabetical order by Applicant:

Application No.	Drug product(s)	Applicant or holder
ANDA 040182	Acetaminophen and Hydrocodone Bitartrate Oral Solution, 7.5 mg/500 mg/15 milliters (mL), available in 473 mL, 118 mL, 15 mL, and 10 mL.	Pharmaceutical Associates, Inc., 201 Delaware St., Greenville, SC 29605.
ANDA 040825	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/5 mg.	Ranbaxy Laboratories Inc., 600 College Rd. East, Princeton, NJ 08540.
ANDA 040822	Acetaminophen and Hydrocodone Bitartrate Tablets, 750 mg/7.5 mg.	Do.
ANDA 040824	Acetaminophen and Hydrocodone Bitartrate Tablets, 500 mg/10 mg.	Ranbaxy Inc., 600 College Rd. East, Princeton, NJ 08540.

Dated: April 24, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09898 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0021]

AbbVie Inc., et al.; Proposal To Withdraw Approval of Abbreviated New Drug Applications for Prescription Pain Medications Containing More Than 325 Milligrams of Acetaminophen; Opportunity for a Hearing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 27, 2014 (79 FR 17156). The document announced an opportunity to request a hearing on the Agency's proposal to withdraw approval of abbreviated new drug applications (ANDAs) from multiple sponsors. The document incorrectly stated that the approval of ANDAs 40825, 40822, and 40824, held by Ranbaxy Laboratories Inc. and Ranbaxy Inc., 600 College Rd. East, Princeton, NJ 08540, and ANDA 40182, held by Pharmaceutical Associates, Inc., 201 Delaware St., Greenville, SC 29605, had not been voluntarily withdrawn. FDA confirms that the approval of ANDAs 40825, 40824, 40822, and 40182 has been voluntarily withdrawn.

FOR FURTHER INFORMATION CONTACT: Rachel Turow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–5094.

SUPPLEMENTARY INFORMATION: In FR Doc. 2014–06802, appearing on page 17156, in the **Federal Register** of Thursday, March 27, 2014, the following correction is made:

On page 17157, in table 1, the entries for ANDAs 40825, 40824, 40822, and 40182 are removed. The approval of these applications has been withdrawn under 21 CFR 314.150(d).

Dated: April 24, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09900 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–E–0682; FDA–2011–E–0683]

Determination of Regulatory Review Period for Purposes of Patent Extension; YERVOY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for YERVOY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6257, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product YERVOY (ipilimumab). YERVOY is indicated for the treatment of unresectable or metastatic melanoma. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for YERVOY (U.S. Patent Nos. 6,984,720 and 7,605,238) from Medarex, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated July 2, 2012, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of YERVOY represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for YERVOY is 3,879 days. Of this time, 3,605 days occurred during the testing phase of the regulatory review period, while 274 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 12, 2000. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 12, 2000.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262*): June 25, 2010. FDA has verified the applicant's claim that the biologics license application (BLA) for YERVOY (BLA 125377/0) was initially submitted on June 25, 2010.

3. *The date the application was approved:* March 25, 2011. FDA has verified the applicant's claim that BLA 125377/0 was approved on March 25, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 966 or 398 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 30, 2014. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 28, 2014. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov*, Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09910 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–E–0154]

Determination of Regulatory Review Period for Purposes of Patent Extension; EDURANT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EDURANT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6257, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product EDURANT (rilpivirine hydrochloride). EDURANT is indicated in combination with other antiretroviral agents for the treatment of human immunodeficiency virus (HIV–1) infection in treatment-naïve adult patients. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EDURANT (U.S. Patent No. 7,125,879) from Janssen Pharmaceutica N.V., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 10, 2012, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EDURANT represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EDURANT is 2,396 days. Of this time, 2,094 days occurred during the testing phase of the regulatory review period, while 302 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* October 29, 2004. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 29, 2004.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* July 23, 2010. FDA has verified the applicant's claim that the new drug application (NDA) for EDURANT (NDA 202022) was submitted on July 23, 2010.

3. *The date the application was approved:* May 20, 2011. FDA has verified the applicant's claim that NDA 202022 was approved on May 20, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 768 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 30, 2014. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 28, 2014. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov*, Docket No. FDA–2013–S–0610.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 25, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–09911 Filed 4–30–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than June 30, 2014.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: National Health Service Corps Site Application and Site Recertification Application.

OMB No. 0915–0230—Revision.

Abstract: The National Health Service Corps (NHSC) of the Bureau of Clinician Recruitment and Service (BCRS), Health Resources and Services Administration, is committed to improving the health of the nation's underserved by uniting communities in need with caring health professionals, and by supporting their efforts to build better systems of care. NHSC-approved sites are health care facilities that provide comprehensive outpatient, ambulatory, primary health care services to populations residing in Health Professional Shortage Areas (HPSAs). Related inpatient services may be provided by NHSC-approved Critical Access Hospitals (CAHs). In order to become an NHSC-approved site, new sites must submit a Site Application for review and approval. Existing NHSC-approved sites are required to complete a Site Recertification Application in order to maintain their status as an approved site. Both the NHSC Site Application and Site Recertification Application request information on the clinical service site, sponsoring agency, recruitment contact, staffing levels, service users, charges for services, employment policies, and fiscal management capabilities. Assistance in completing these applications may be obtained through the appropriate State Primary Care Offices and the NHSC. The information collected on the applications is used for determining the eligibility of sites for the assignment of NHSC health professionals and to verify the need for NHSC clinicians. Approval as an NHSC service site is valid for 3 years. Sites wishing to remain eligible for the assignment of NHSC providers, must submit a Site Recertification Application every 3 years.

Need and Proposed Use of the Information: The need and purpose of this information collection is to obtain information for NHSC site applicants. The information obtained from the NHSC Site Application and Site Recertification Application will be utilized to determine the eligibility of sites to participate in the NHSC as an approved service site.

Likely Respondents: Health care facilities interested in participating in the NHSC and becoming an approved service site.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
NHSC New Site Application	2,000	1	2,000	0.5	1,000
NHSC Site Recertification Application	1,000	1	1,000	0.5	500
Total	3,000		3,000		1,500

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: April 23, 2014.

Jackie Painter,

Deputy Director, Division of Policy and Information Coordination.

[FR Doc. 2014–09887 Filed 4–30–14; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Translational Research for the Development of Novel Interventions.

Date: May 20, 2014.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 25, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–09931 Filed 4–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 22 2014.

Open: 8:30 a.m. to 2:15 p.m.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: National Institutes of Health (NIH), Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, Conference Rooms C/D/E, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: April 25, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–09930 Filed 4–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4166–DR; Docket ID FEMA–2014–0003]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4166–DR), dated March 12, 2014, and related determinations.

DATES: Effective Date: April 8, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 12, 2014.

Lexington County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09985 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4168–DR; Docket ID FEMA–2014–0003]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4168–DR), dated April 2, 2014, and related determinations.

DATES: *Effective Date:* April 2, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 2, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from flooding and mudslides beginning on March 22, 2014, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Snohomish County, including the Sauk-Suiattle, Stillaguamish, and Tulalip Tribes for Individual Assistance.

Snohomish County and the Sauk-Suiattle, Stillaguamish, Tulalip Tribes for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All counties and Indian Tribes within the State of Washington are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09980 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4171–DR; Docket ID FEMA–2014–0003]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–4171–DR), dated April 11, 2014, and related determinations.

DATES: Effective Date: April 11, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 11, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from a severe winter storm during the period of March 2–4, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster: Carroll, Cheatham, Dickson, Haywood, Houston, Madison, Shelby, and Tipton Counties for Public Assistance. All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09984 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4165–DR; Docket ID FEMA–2014–0003]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4165–DR), dated March 6, 2014, and related determinations.

DATES: *Effective Date:* April 1, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 6, 2014.

Fannin, Habersham, Taliaferro, and Twiggs Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09987 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4169–DR; Docket ID FEMA–2014–0003]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–4169–DR), dated April 4, 2014, and related determinations.

DATES: *Effective Date:* April 4, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 4, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from a severe winter storm during the period of February 6–10, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oregon have been designated as adversely affected by this major disaster:

Benton, Lane, Lincoln, and Linn Counties for Public Assistance.

All counties within the State of Oregon are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09979 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4167–DR; Docket ID FEMA–2014–0003]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4167–DR), dated March 31, 2014, and related determinations.

DATES: Effective Date: March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 31, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from a severe winter storm during the period of March 6–7, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Alamance, Caswell, Davidson, Davie, Granville, Guilford, Orange, Person, and Randolph Counties for Public Assistance.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09977 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4170–DR; Docket ID FEMA–2014–0003]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland

(FEMA–4170–DR), dated April 10, 2014, and related determinations.

DATES: *Effective Date:* April 10, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 10, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Maryland resulting from a snowstorm during the period of February 12–13, 2014, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide snow assistance under the Public Assistance program for a limited time during or proximate to the incident period.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to Section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven S. Ward, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maryland have been designated as adversely affected by this major disaster:

Baltimore, Carroll, and Howard Counties for emergency protective measures (Category B), under the Public Assistance program.

Baltimore, Carroll, and Howard Counties for snow assistance under the Public Assistance program for any continuous 48-hour period during or proximate the incident period.

All counties within the State of Maryland are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–09981 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One Public Collection of Information: Exercise Information System

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0057, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden for the TSA Exercise Information System (EXIS). EXIS is a web portal designed to serve stakeholders in the transportation industry in regard to security training exercises. EXIS provides stakeholders with transportation security exercise scenarios and objectives, best practices and lessons learned, and a repository of the user's own historical exercise data for use in future exercises. It also allows stakeholders to design their own security exercises based on the unique needs of their specific transportation mode or method of operation. Utilizing and inputting information into EXIS is completely voluntary.

DATES: Send your comments by June 30, 2014.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina Walsh at the above address, or by telephone 571–227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation is available at *www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose of Data Collection

The Exercise Information System (EXIS) is an Internet-accessible knowledge-management system developed by TSA to serve its relevant stakeholders (such as members of the transportation industry, port authorities, Federal agencies, and state and local governments). EXIS integrates security-related training and exercise components constituting Sensitive Security Information.[1] It gives

[1] Sensitive Security Information (SSI) is information which, if publicly released, would be detrimental to transportation security, and is defined at 49 U.S.C. 114(r) and 49 CFR part 1520.

stakeholders valuable security exercise scenarios and objectives, best practices and lessons learned, and a repository of the users' own historical exercise data for use in future exercises. Transportation industry stakeholders can choose scenarios and objectives based on their vulnerabilities, mode of transportation, and the size of their operation.

As a knowledge management system, EXIS provides end-to-end security exercise support from the initial planning meeting through exercise design, implementation, evaluation, and reporting. Working in a secure online environment, with a username and password, EXIS users can easily:

- Customize exercise design: Develop objectives, scenarios, contingency injects, evaluation metrics, and other data sets.
- Conduct robust analyses: Sort evaluation data by exercise objectives, transportation modes, scenario types, or functional areas.
- Create analytical reports: Identify and sort lessons learned, corrective actions, and best practices from past exercises or from those of other jurisdictions.
- Collaborate and share information: Build relationships with partners.

EXIS was developed by TSA as part of its broad responsibilities and authorities under the Aviation and Transportation Security Act (ATSA),[2] and delegated authority from the Secretary of Homeland Security, for ''security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of Transportation.'' [3] EXIS is a component of TSA's Intermodal Security Training Exercise Program (I–STEP), which works with surface transportation stakeholders in developing and conducting security exercises. I–STEP also fulfills requirements of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) [4] regarding the establishment of security training exercises for surface modes of transportation that can assess and improve the capabilities of these modes in preventing, preparing for, mitigating against, responding to, and recovering from acts of terrorism.[5]

EXIS helps users design an exercise through the use of a ''wizard'' (an interface that leads the user through a series of steps to help them work through an otherwise potentially complex process). The EXIS wizard walks the user through a step-by-step process allowing them to build a profile for their exercise. EXIS provides users with suggested scenarios based on the area of focus and objectives selected by the user. Users also have the ability to create custom injects or modify a Generic EXIS Community Scenario. Exercise Administrators, who are TSA employees within the Program Office, may suggest modified scenarios and custom injects for use in exercise design.

Once the user has worked through all the steps guided by the wizard, EXIS generates a collaborative workspace for exercise team members to work within. All exercise elements can be customized and saved. Lessons learned, best management practices, and corrective actions are pre-populated into the workspace based on the scenario and objectives of the exercise determined during its creation. EXIS is adaptable to changing exercise, tracking, and reporting needs as they mature and can support the addition of future exercise elements.

By linking ''exercise communities,'' users can also tackle cross-jurisdictional issues, such as interoperability. Users are able to focus on the underlying issues of transportation security and preparedness, and avoid repeating costly mistakes. Finally, users can also provide feedback on the usefulness of EXIS itself so that TSA may improve this system to better suit the stakeholders' future security needs.

TSA intends EXIS to be used primarily by individuals with security responsibilities, such as heads of security, for public and private owner/operators in the surface transportation community, including mass transit systems, freight/rail operators, highway/trucking companies, school bus operators, and pipeline systems. These individuals, and other stakeholders, can voluntarily contact TSA to request access to EXIS; TSA does not require participation in EXIS. Those seeking access or desiring more information about I–STEP products and services can contact a TSA modal representative or send their request by email to *ISTEP@dhs.gov.*

Description of Data Collection

TSA will collect five types of information through EXIS. The collection is voluntary. EXIS users are not required to provide all information requested—however, if users choose to withhold information, they will not receive the benefits of EXIS associated with that information collection.

1. *User registration information.* Because EXIS includes SSI information, TSA must collect information upon registration to ensure only those members of the transportation community with a relevant interest in conducting security training exercises and with an appropriate level of need to access security training information are provided access to EXIS. Such registration information will include the user's name, professional contact information, agency/company, job title, employer, and employment verification contact information.

2. *Desired nature and scope of the exercise.* TSA will collect this information to generate an EXIS training exercise appropriate for the particular user. Users are asked to submit their desired transportation mode, exercise properties, objectives, scenario events, and participating agencies.

3. *Corrective actions/lessons learned/best practices.* TSA collects this information to document and share the users' ideas and methods for improving transportation security with other transportation stakeholders. The user has the option to suggest that their lesson(s) learned, best practice(s), or corrective action(s) be published to the wider EXIS user base. The I–STEP team sends the item to Subject Matter Experts within TSA for vetting and validation. Once the information is validated, any company or user identifying information is removed and the content is published to the site for all users to access.

4. *Evaluation feedback.* TSA collects this information for the purpose of evaluating the usefulness of EXIS in facilitating security training exercises for the users. TSA can then modify EXIS to better suit its users' needs.

5. *After-Action Reports.* The EXIS automatically summarizes information from items (2) and (3) mentioned above in order to create formal After-Action Reports (AAR) for users. These AARs include an exercise overview, goals and objectives, scenario event synopsis, analysis of critical issues, exercise design characteristics, conclusions, and the executive summary. The AAR is the output of the exercise process. Stakeholders use the report to identify areas in which they can assign resources to mitigate risk and enhance the security posture within their organization.

Use of Results

TSA will use this information to assess and improve the capabilities of

[2] Public Law 107–71 (115 Stat. 597, Nov. 19, 2001).

[3] *See* 49 U.S.C. 114 (d).

[4] Public Law 110–53 (121 Stat. 266, Aug. 3, 2007).

[5] 9/11 Act secs. 1407 (codified at 6 U.S.C. 1136(a)), 1516 (codified at 6 U.S.C. 1166), and 1533 (codified at 6 U.S.C. 1183). *See also* the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (120 Stat. 1884, Oct. 13, 2006) (codified at 6 U.S.C. 911 (a)).

all surface transportation modes to prevent, prepare for, mitigate against, respond to, and recover from transportation security incidents. A failure to collect this information will limit TSA's ability to effectively test security countermeasures, security plans, and the ability of a modal operator to respond to and quickly recover after a transportation security incident. Insufficient awareness, prevention, response, and recovery to a transportation security incident will result in increased vulnerability of the U.S. transportation network and a reduced ability of DHS to assess system readiness.

Based on industry population estimates and growth rates, and interest generated amongst the surface transportation modes during the first three years following EXIS' release to the public, TSA estimates that there will be approximately 12,998 users for the next three years (4,034 users in Year 1, 4,278 users in Year 2, and 4,686 users in Year 3.) This was calculated by first estimating the future EXIS population using the current number of users (364) and its rate of growth per year (67 percent), in addition to the number of annual users added through outreach events (3,670). To determine the exercise response rate, the average number of exercises conducted annually was calculated based on the number of exercises built per user (roughly one in three users conducted an exercise). TSA calculated that 35 percent of users conduct one exercise per year. Thus, the estimated average number of exercises conducted per year totals 1,517 (12,998 users *.35)/3 years)). TSA estimates users will spend approximately 4 hours per EXIS exercise inputting the information. Finally, the average number of annual exercises conducted was multiplied by four hours (the amount of time users spent building each exercise) to determine the average annual hourly burden. Given this information, the total annual hourly burden for EXIS's collection of information is 6,068 hours (1,517 users * 4 hours). There are no fees to use EXIS. The total annual cost burden to respondents is $0.00.

Dated: April 25, 2014.

Christina Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2014–09992 Filed 4–30–14; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release To Allow Importers and Brokers To Certify From ACE Entry Summary

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning Cargo Release functionality in the Automated Commercial Environment (ACE) by allowing importers and customs brokers to now certify from ACE Entry Summary cargo transported by air, ocean or rail during the Ace Cargo Release test. Originally, the test was known as the Simplified Entry Test because the test simplified the entry process by reducing the number of data elements required to obtain release for cargo transported by air. The test was subsequently modified to provide more capabilities to test participants, allowing CBP to deliver enhanced functionality and to include expansion to the ocean, rail and truck modes of transportation. This notice invites more participants to join the test.

DATES: The ACE Cargo Release test modifications set forth in this document are effective no earlier than April 6, 2014. The test will run until approximately November 1, 2015.

ADDRESSES: Comments or questions concerning this notice and indication of interest in participation in ACE Cargo Release should be submitted, via email, to Susan Maskell at *susan.c.maskell@cbp.dhs.gov*. In the subject line of your email, please use, ''*Comment on ACE Cargo Release Certify from Summary*''. The body of the email should include information regarding the identity of the ports where filings are likely to occur.

FOR FURTHER INFORMATION CONTACT: For policy related questions, contact Stephen Hilsen, Director, Business Transformation, ACE Business Office, Office of International Trade, at *stephen.r.hilsen@cbp.dhs.gov*. For technical questions, contact Susan Maskell, Client Representative Branch, ACE Business Office, Office of International Trade, at *susan.c.maskell@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

I. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and, if the test is successful, will end with implementation of the functionality through the promulgation of regulations governing the new ACE feature and the retirement of the legacy ACS function.

The ACE Cargo Release test was previously known as the Simplified Entry Test because the test simplified the entry process by reducing the number of data elements required to obtain release for cargo transported by air. The original test notice required participants to be a member of the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Through phased releases of ACE component functionality this test has been expanded to allow all eligible participants to join the test for an indefinite period regardless of the C-TPAT status of an importer self-filer or a customs broker.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in *Section VIII,* entitled, ''*Development of ACE Prototypes.*'' The procedures and criteria applicable to participation in the prior ACE tests remain in effect unless

otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

III. Eligibility Requirements

To be eligible to apply for this test, the applicant must: (1) Be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; or (2) have stated its intent to file entry summaries in ACE in its request to participate in the test.

Parties seeking to participate in this test must use a software package that has completed Automated Broker Interface (ABI) certification testing for ACE and offers the simplified entry message set prior to transmitting data under the test. *See* the General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on procedures for obtaining an ACE Portal Account. Importers not self-filing must be sure their broker has the capability to file entry summaries in ACE.

IV. Test Participation Selection Criteria

The ACE Cargo Release test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported in the air, ocean and rail modes. The ability to certify from ACE Entry Summary will not apply to the truck mode of transportation at this time. Please note that participants must meet the eligibility requirements mentioned above and set forth in 79 FR 6210 (February 3, 2014), 76 FR 69755 (November 9, 2011), 74 FR 9826 (March 6, 2009), 74 FR 69129 (December 30, 2009), 73 FR 50337 (August 26, 2008) and 72 FR 59105 (October 18, 2007).

CBP will endeavor to accept all new eligible applicants on a first come, first served basis; however, if the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select eligible participants in order to achieve a diverse pool in accordance with the selection standards set forth in 76 FR 69755 (November 9, 2011).

Any party seeking to participate in this test must provide CBP, in their request to participate, their filer code and the port(s) at which they are interested in filing ACE Cargo Release transaction data. At this time, ACE Cargo Release data may be submitted only for entries filed at certain ports. A current listing of those ports may be found on the following Web site: *www.cbp.gov/document/guidance/ace-cargo-release-pilot-ports.* CBP may expand to additional ports in the future. Any changes and/or additions to the ports that are part of the ACE Cargo Release test will be posted to this Web site.

Filing Capabilities

The filing capabilities for the ACE Cargo Release test set forth in 78 FR 66039 (November 4, 2013) and 79 FR 6210 (February 3, 2014) continue to apply and are now expanded to allow filers to certify ACE Cargo Release data elements through the transmission of the ACE Entry Summary. *See* 73 FR 50337 (August 26, 2008) and 74 FR 9826 (March 6, 2009). To certify from ACE Entry Summary, importers and customs brokers need to file the following: (1) ACE Cargo Release data elements; (2) ACE Entry Summary data; and (3) the three additional data elements announced in this notice. This test does not include split shipments, partial shipments, entry on cargo which has been moved in-bond from the first U.S. port of unlading, and entries requiring Partner Government Agency (PGA) information.

These new capabilities include functionality specific to the filing and processing of type ''01'' (consumption) and type ''11'' (informal) commercial entries for air, ocean and rail modes of transportation. The ACE Cargo Release filing capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B).

Data Elements To Be Filed

The ACE Cargo Release data set, as a stand-alone transaction or certified from an ACE Entry Summary transaction, may be filed at any time prior to arrival of the cargo in the United States port of arrival with the intent to unlade. This data set fulfills merchandise entry requirements and allows for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. The ACE Cargo Release data set includes data elements required in the original Cargo Release pilot for basic air shipments as well as data elements subsequently added to accommodate more complex shipments and other modes of transportation. The ACE Cargo Release data elements are:

(1) Importer of Record Number.
(2) Buyer name and address.
(3) Buyer Employer Identification Number (consignee number).
(4) Seller name and address.
(5) Manufacturer/supplier name and address.
(6) HTS 10-digit number.
(7) Country of origin.
(8) Bill of lading.
(9) Bill of lading issuer code.
(10) Entry number.
(11) Entry type.
(12) Estimated shipment value.
(13) Bill Quantity (The quantity of shipping units shown in the bill of lading. If bill of lading quantity is specified in the entry, it becomes the entered and released quantity for that bill. If the bill quantity is not specified, full bill quantity will be entered and released for that bill).

Data element (1) and data elements (6) through (12) are defined in the same manner as when they are used for entry filing on the CBP Form 3461. Data elements (2) through (5) and (13) are defined in accordance with the provisions of 19 CFR 149.3.

In addition to the data elements currently filed on the ACE Entry Summary, the importer or broker acting on behalf of the importer must also file additional data elements if they wish to certify from ACE Entry Summary. These additional data elements are required for the ACE Cargo Release data set. This notice introduces three additional data elements not otherwise required for the ACE Entry Summary transmission. These new data elements are defined in accordance with the provisions of 19 CFR 149.3. They are as follows:

(1) Seller Name and Address.
(2) Buyer Name and Address.
(3) Manufacturer/Supplier Name and Address.

By filing the ACE Cargo Release Data elements, the ACE Entry Summary data, and the three additional data elements announced in this notice, importers and customs brokers will be eligible to participate in the Test.

Functionality

Upon receipt of the ACE Cargo Release data, the ACE Entry Summary data, and the three additional data elements, CBP will process the submission and will subsequently transmit its cargo release decision to the filer. The merchandise will then be considered to be entered upon its arrival in the port with the intent to unlade, as provided by current 19 CFR 141.68(e) and certified from summary. If payment for entry is required, it will continue to

be processed through ACS. A filer may electronically submit a correction or a request for cancellation of the entry at any time prior to the cargo arriving and being released. If a submission is transmitted to CBP requesting correction or cancellation, CBP's decision regarding the original submission is no longer controlling.

Test Duration

The ACE Cargo Release test modifications set forth in this document are effective no earlier than April 6, 2014. The test will run until approximately November 1, 2015, and is open to type ''01'' (consumption) and type ''11'' (informal) commercial entries filed in the air, ocean, and rail modes of transportation at specified ports. Expansion to other modes will be announced via a separate **Federal Register** notice.

V. Misconduct Under the Test

The terms for misconduct under the ACE Cargo Release Test set forth in 78 FR 66039 (November 4, 2013) continue to apply.

VI. Previous Notices

All requirements and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

VII. Paperwork Reduction Act

The collection of information contained in this ACE Cargo Release test have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB number 1651–0024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

VIII. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).

Dated: April 4, 2014.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2014–10007 Filed 4–30–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N073; FXES11120800000–145–FF08EVEN00]

Low-Effect Habitat Conservation Plan; Scotts Valley Multi-Agency Regional Intertie Project, Santa Cruz County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from James Mueller, District Manager of the San Lorenzo Valley Water District, for a 5-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of the federally endangered Mount Hermon June Beetle and Zayante band-winged grasshopper, and the federally threatened California red-legged frog, which is likely to occur incidental to the construction and maintenance of two water pump stations and an intertie pipeline connection on three parcels in central Santa Cruz County, California. We invite comments from the public on the application package, which includes a low-effect habitat conservation plan (HCP) for the three species for the Scotts Valley Multi-Agency Regional Intertie Project in Santa Cruz County, California.

DATES: To ensure consideration, please send your written comments by June 2, 2014.

ADDRESSES: You may download a copy of the habitat conservation plan, draft

environmental action Statement and low-effect screening form, and related documents on the Internet at *http://www.fws.gov/ventura/*, or you may request copies of the documents by U.S. mail or phone (see below). Please address written comments to Stephen P. Henry, Acting Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Chad J. Mitcham, Fish and Wildlife Biologist, by U.S. mail at the above address, or by telephone at (805) 644–1766.

SUPPLEMENTARY INFORMATION: We have received an application from James Mueller, District Manager of the San Lorenzo Valley Water District, for a 5-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The application addresses the potential for ''take'' of the federally endangered Mount Hermon June Beetle (*Polyphylla barbata*) and Zayante band-winged grasshopper (*Trimerotropis infantilis*), and the federally threatened California red-legged frog (*Rana draytonii*). This take is likely to occur incidental to the construction and maintenance of two water pump stations and an intertie water pipeline connection on three parcels in central Santa Cruz County, California. The applicant would implement a conservation program to minimize and mitigate project activities that are likely to result in take of the three species as described in their HCP. We invite comments from the public on the application package, which includes a low-effect HCP for the three species for the Scotts Valley Multi-Agency Regional Intertie Project in Santa Cruz County, California. This proposed action has been determined to be eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 43 U.S.C. 4321 *et seq.*).

Background

The U.S. Fish and Wildlife Service (Service) listed the Mount Hermon June beetle and Zayante band-winged grasshopper as endangered on January 24, 1997 (62 FR 3616), and listed the California red-legged frog as threatened on May 23, 1996 (61 FR 25813). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. The Act defines ''Incidental Take'' as take that is not the purpose of carrying out of an otherwise lawful activity. Regulations governing ITPs for threatened and endangered species are provided at 50 CFR 17.32 and 17.22, respectively. Issuance of an ITP must not jeopardize the existence of federally listed fish, wildlife, or plant species.

Take of listed plants is not prohibited under the Act unless such take would violate State law. As such, take of plants cannot be authorized under an ITP. Plant species may be included on a permit in recognition of the conservation benefits provided them under a HCP. All species, including plants, covered by the ITP receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)). In addition to meeting other specific criteria, actions undertaken through implementation of the HCP must not jeopardize the continued existence of federally listed animal or plant species.

Applicant's Proposal

James Mueller (hereafter, the applicant) has submitted a low-effect HCP in support of his application for an incidental take permit (ITP) to address take of the Mount Hermon June beetle, Zayante band-winged grasshopper, and the California red-legged frog that is likely to occur as the result of direct impacts to up to 0.226 acres (ac) (9,831 square feet (sf)) of degraded Sandhills habitat that may be occupied by the species. Take would be associated with the construction, operation, and maintenance of two pump stations and a pipeline intertie connection on three existing parcels legally described as Assessor Parcel Numbers 022–231–20, 066–221–06, and 061–371–16 and located in and around the City of Scotts Valley in central Santa Cruz County, California. The applicant is requesting a permit for take of Mount Hermon June beetle, Zayante band-winged grasshopper, and the California red-legged frog that would result from ''covered activities'' that include the construction, operation, and maintenance of two pump stations and a pipeline intertie connection.

The applicant proposes to minimize and mitigate take of the Mount Hermon June beetle, Zayante band-winged grasshopper, and California red-legged frog associated with the covered activities by fully implementing the HCP.

The following measures will be implemented:

(1) Avoid impacts to these species by locating the new pipelines underneath existing roads;

(2) Avoid construction during the flight seasons of the Mount Hermon June beetle and Zayante band-winged grasshopper, if practicable;

(3) Cover exposed soils with erosion control fabric to prevent both species from burrowing into exposed soil at the construction site if soil-disturbing activities occur between May and October;

(4) Engage the services of a qualified entomologist to relocate any larvae of the Mount Hermon June beetle unearthed during construction activities to suitable habitat outside of the impact area;

(5) Use light bulbs that are certified not to attract nocturnally active insects, in order to minimize disruption of Mount Hermon June beetle breeding behavior during the adult flight season (i.e., if outdoor night lighting is to be included on the new pump stations);

(6) Secure a Service-approved herpetologist to capture any California red-legged frogs that disperse into project work areas and to relocate them to suitable habitat outside of the impact area;

(7) Mitigate both temporary and permanent impacts to Mount Hermon June beetle and Zayante band-winged grasshopper habitat through off-site mitigation at a ratio of 1:1, through the acquisition of 0.226 ac (9,831 sf) of conservation credits from the Zayante Sandhills Conservation Bank; and

(8) Fund up to $336,479.00, as needed, to ensure implementation of all minimization measures, monitoring, and reporting requirements identified in the HCP.

In the proposed HCP, the applicant considers two alternatives to the proposed action: ''No Action'' and ''Project Redesign.'' Under the ''No Action'' alternative, an ITP for the Scotts Valley Multi-Agency Intertie Project (project) would not be issued. The project would not be built, and the purchase of 9,831 sf of conservation credits would not be provided to effect recovery actions for the Mount Hermon June beetle and Zayante band-winged grasshopper in high-quality Sandhills habitat located at the Zayante Sandhills Conservation Bank. Because the proposed action results in a net benefit for the Mount Hermon June beetle and Zayante band-winged grasshopper, and the No Action Alternative does not meet

the applicant's need, the No Action Alternative has been rejected.

Under the ''Project Redesign'' alternative, the project would be redesigned to avoid or further reduce take of Mount Hermon June beetle, Zayante band-winged grasshopper, and California red-legged frog. However, smaller pump stations cannot satisfy the San Lorenzo Valley Water District's need to regulate water flow in the new pipelines, and thus will not meet the applicant's need. Therefore, no reduced take can actually be realized. For this reason, the alternate design alternative has also been rejected.

Our Preliminary Determination

We are requesting comments on our preliminary determination that the applicant's proposal will have a minor or negligible effect on the Mount Hermon June beetle, Zayante band-winged grasshopper, and California red-legged frog, and that the HCP qualifies to be processed as low effect as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determinations on three criteria: (1) Implementation of the proposed project as described in the HCP would result in minor or negligible effects on federally listed, proposed, and/or candidate species and their habitats; (2) implementation of the HCP would result in minor negligible effects on other environmental values or resources; and (3) project impacts, considered together with those of other past, present, and reasonably foreseeable future projects, would not result in cumulatively significant effects. In our analysis of these criteria, we have made a preliminary determination that approval of the HCP and issuance of an ITP qualify for categorical exclusion under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), as provided by the Department of Interior Manual (516 DM 2 Appendix 2 and 516 DM 8); however, based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the permit application, including the HCP and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of the ITP would comply with section 7(a)(2) of the Act by conducting an intra-Service Section 7 consultation.

Public Review

We provide this notice under section 10(c) of the Act and the NEPA public involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We are requesting comments on our determination that the applicants' proposal will have a minor or neglible effect on the Mount Hermon June beetle, Zayante band-winged grasshopper, and California red-legged frog, and that the plan qualifies as a low-effect HCP as defined by our 1996 Habitat Conservation Planning Handbook. We will evaluate the permit application, including the HCP and comments we receive, to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. We will use the results of our internal Service consultation, in combination with the above findings, in our final analysis to determine whether to issue the permits. If the requirements are met, we will issue an ITP to the applicant for the incidental take of Mount Hermon June beetle, Zayante band-winged grasshopper, and California red-legged frog. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit applications, plans, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: April 25, 2014.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2014–09932 Filed 4–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR04073000, XXXR4081X3, RX.05940913.7000000]

Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group (AMWG) makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

DATES: The May 27, 2014, AMWG WebEx/conference call will begin at 12:30 p.m. (EDT), 10:30 a.m. (MDT), and 9:30 a.m. (PDT) and conclude three (3) hours later in the respective time zones. See call-in information in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3858; email at *gknowles@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee, the AMWG, a technical work group, a Grand Canyon Monitoring and Research Center, and independent review panels. The technical work group is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Agenda: The primary purpose of the conference call will be for the AMWG to review the Glen Canyon Dam Adaptive Management Budget for Fiscal Year 2014 and outyear budget development. There will also be an update on the Long-Term Experimental and Management Plan Environmental Impact Statement. To participate in the WebEx/conference call, please use the following instructions:

1. Go to: *https://ucbor.webex.com/ucbor/j.php?MTID=m4243b6d71d49fd4864b1186196b5c1e4.*

2. If requested, enter your name and email address.

3. If a password is required, enter the meeting password: AMWG.

4. Click ''Join''.

Audio Conference Information

- Phone Number: (866) 917–3895
- Passcode: 6622891
- Meeting Number: 286 320 070

There will be limited ports available, so if you wish to participate, please contact Linda Whetton at (801) 524–3880 to register.

To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/14may27/index.html.* Time will be allowed for any individual or organization wishing to make formal oral comments on the call. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone (801) 524–3781; facsimile (801) 524–3858; email at *gknowles@usbr.gov* at least five (5) days prior to the call. Any written comments received will be provided to the AMWG members.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 24, 2014.

Glen Knowles,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2014–09933 Filed 4–30–14; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1013 (Second Review)]

Saccharin From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on saccharin from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission[1]; to be assured of consideration, the deadline for responses is June 2, 2014. Comments on the adequacy of responses may be filed with the Commission by July 14, 2014. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 1, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On July 9, 2003, the Department of Commerce issued an antidumping duty order on imports of saccharin from China (68 FR 40906). Following the five-year reviews by Commerce and the Commission, effective June 8, 2009, Commerce issued a continuation of the antidumping duty order on imports of saccharin from China (74 FR 27089). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first five-year review determination, the Commission defined one *Domestic Like Product* consisting of all forms of saccharin.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full first five-year review determination, the Commission defined the *Domestic Industry* as the domestic producer of saccharin.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 14–5–314, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 2, 2014. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 14, 2014. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2008.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2013, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant).

If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2013 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2008, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 21, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–09315 Filed 4–30–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–914]

Investigations: Terminations, Modifications and Rulings: Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has designated temporary relief proceedings in the above-captioned investigation as ''more complicated.''

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436, telephone (202) 205–2661. Copies of all 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 (*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 the matter can be obtained by contacting

the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On March 5, 2014, FMC Corporation of Philadelphia, Pennsylvania (''FMC'') filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sulfentrazone, sulfentrazone compositions, and processes for making sulfentrazone, by reason of infringement of certain claims of U.S. Patent No. 7,169,952 (''the '952 patent''). The complaint named Beijing Nutrichem Science and Technology Stock Co., Ltd., of Beijing, China; Jiangxi Heyi Chemicals Co., Ltd. of Jiujiang City, China; Summit Agro USA, LLC, of Cary, North Carolina; and Summit Agro North America Holding Corporation, of New York, New York, as proposed respondents. Simultaneously with its complaint, FMC filed a motion for temporary relief requesting that the Commission issue a temporary limited exclusion order and temporary cease and desist order prohibiting, during the pendency of the Commission's investigation, the importation into and the sale within the United States after importation of certain allegedly infringing articles. Based on the complaint, the Commission instituted an investigation on April 14, 2014. 79 FR 20907–908 (April 14, 2014).

On April 22, 2014, the ALJ issued Order No. 6, designating the temporary relief proceeding as ''more complicated'' pursuant to Commission Rule 210.60, on the basis of the complexity of the issues raised in FMC's motion for temporary relief.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Dated: April 25, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–09864 Filed 4–30–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–886]

Certain TV Programs, Literary Works for TV Production and Episode Guides; Commission Determination to Not To Review Two Initial Determinations (Order Nos. 18 And 22); Termination 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 an initial determination (Order No. 18) granting a motion for summary determination of no copyright infringement and an initial determination (Order No. 22) concluding no unfair competition and terminating the investigation in Inv. No. 337–TA–886, *Certain TV Programs, Literary Works for TV Production and Episode Guides.* The investigation is terminated with a finding of no violation.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. 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 July 15, 2013, based on a complaint filed by E.T. Radcliffe, LLC of Dallas Texas and Emir Tiar of Coto De Caza, California (collectively, ''Complainants''), alleging violations of 19 U.S.C. 1337(a)(1)(B), in the importation and sale of certain TV programs, literary works for TV production and episode guides pertaining to same by reason of infringement of U.S. Copyright Nos. PAU003415849, TXU001832727, and PAU00363 9268. The complaint also alleged violations of 19 U.S.C. 1337(a)(1)(A) by reason of unfair methods of competition and unfair acts, the threat or effect of which is to substantially injure an industry in the United States. The notice of investigation named The Walt Disney Company of Burbank, California; Thunderbird Films, Inc. of Los Angeles, California; and Mindset Television, Inc. of Canada (collectively, ''Respondents'') as respondents.

On January 6, 2014, Respondents filed a motion for summary determination pursuant to Commission Rule 210.18, alleging that there are no genuine issues of material fact in dispute with respect to copyright infringement and that they are entitled to a determination of no copyright infringement as a matter of law. On February 6, 2014, the presiding Administrative Law Judge (''ALJ'') (Judge Lord) issued an ID (Order No. 18) granting Respondents' motion.

On February 6, 2014, the ALJ issued Order No. 19 to show cause why Complainants' claim based on unfair methods of competition should not be terminated in view of Order No. 18. On February 12, 2014, Complainants filed a response. On February 14, 2014, the Respondents filed a response to the order to show cause and to Complainants' response. On February 18, 2014, the ALJ issued Order No. 21, providing Complainants with three days to reply to the Respondents' response. On February 21, 2014, the Complainants filed a reply.

On February 21, 2014, the ALJ issued an ID (Order No. 22) concluding no unfair competition under 19 U.S.C. 1337(a)(1)(A) and terminating the investigation in its entirety.

On February 26, 2014, Complainants filed a combined petition for review of Order Nos. 18 and 22. On February 28, 2014, the Commission issued a notice extending the whether to review date for Order No. 18 to April 25, 2014, and clarifying that the whether to review date for Order No. 22 is also on April 25, 2014. On March 3, 2014, Complainants filed a motion for leave to file out of time their petition for review as it relates to Order No. 18. On March 5, 2014, Respondents and the IA each filed a response to Complainants' petition.

Upon consideration of the IDs, the petition for review, and the relevant portions of the record, the Commission has determined to deny Complainant's motion for leave to file out of time their petition for review as it relates to Order No. 18, and has determined not to review the subject IDs (Order Nos. 18

and 22). The investigation is hereby terminated.

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 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Documents relating to this determination, including a Concurring Memorandum from Commissioner Johanson, can be found on the Commission's Electronic Document Information System (EDIS) under Docket Number 886.

Issued: April 25, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–09915 Filed 4–30–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 14–4]

Kate B. Mayes, M.D.; Decision and Order

On February 19, 2014, Administrative Law Judge (ALJ) Gail A. Randall issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificate of Registration be revoked and that any pending application to renew or modify her registration be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(3), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration BM8500452, issued to Kate B. Mayes, M.D., be, and it hereby is, revoked. I further order that any pending application of Kate B. Mayes, M.D, to renew or modify her registration, be, and it hereby is, denied. This Order is effective June 2, 2014.

Dated: April 21, 2014.

Thomas M. Harrigan,

Deputy Administrator.

Bryan Bayly, Esq., *for the Government*
Kate B. Mayes, M.D., *Pro Se, for the Respondent*

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Facts

Gail A. Randall, Administrative Law Judge. The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (''DEA'' or ''Government''), issued an Order to Show Cause (''Order'') dated October 25, 2013, proposing to revoke DEA Certificate of Registration (''COR'') number BM8500452 of Kate B. Mayes, M.D. (''Respondent''), a practitioner, pursuant to 21 U.S.C. 824(a)(3) (2006), because Respondent lacks state authority to manufacture, distribute, or dispense controlled substances.

The Order alleged that, effective June 27, 2012, Respondent's medical license was suspended by the South Carolina Board of Medical Examiners (''Board''). [Order at 1]. Accordingly, the Order stated that ''DEA must revoke [Respondent's] current DEA registration based upon [her] lack of authority to handle controlled substances in the state of South Carolina.'' [*Id.* at 1–2 (citing 21 U.S.C. 802(21), 823(f), and 824(a)(3))]. The Order notified Respondent that she may, within thirty days of her receipt of the Order, request a hearing to show cause as to why the DEA should not revoke her registration. [*Id.* at 2 (citing 21 CFR 1301.43(a) (2013)].

Respondent was served with the Order on November 4, 2013. On December 3, 2014, Respondent timely filed a letter with this office requesting that I, the Administrative Law Judge assigned to this matter, grant her an extension of time to respond to the Order. Pursuant to my authority under 21 CFR 1316.47(b), I granted Respondent's request for an extension of time and ordered Respondent to respond to the Order by December 19, 2013. On December 19, 2013, Respondent filed a request for a hearing,[1] and on December 20, 2013, I ordered the Government and Respondent to file prehearing statements by January 10, 2014 and January 17, 2014, respectively.

On January 10, 2014, the Government filed a motion with this Court entitled Government's Motion for Summary Judgment and to Stay the Dates for the Parties to Submit Prehearing Statements (''Government's Motion''). Therein, the Government requested that I issue a decision recommending that the DEA summarily revoke Respondent's COR because Respondent's state medical license has been suspended and Respondent therefore lacks state authority to handle controlled substances. [Gov't Mot. at 1, 2]. Additionally, the Government requested that I postpone the deadlines for filing prehearing statements until I have ruled on the motion. [*Id.*].

On January 13, 2014, I issued an order for Respondent to respond to the Government's Motion by January 21, 2014. Also in the order, I stayed the deadlines for prehearing statements until I have ruled on the Government's Motion. Respondent did not file a response to the Government's Motion; indeed, this office has received no correspondence from Respondent since she requested a hearing on December 19, 2013.

For the reasons set forth below, I will grant the Government's Motion and recommend that the Deputy Administrator revoke the Respondent's DEA Certificate of Registration and deny any currently pending applications to renew this registration.

II. Discussion

The Controlled Substances Act (''CSA'') provides that obtaining a DEA registration is conditional on holding a state license to handle controlled substances. [*See* 21 U.S.C. 802(21) (defining ''practitioner'' as ''a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice''); 21 U.S.C. 823(f) (''the Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices''); *see also* § 824(a)(3) (''a registration may be suspended or revoked by the Attorney General upon a finding that the registrant has had his State license or registration suspended, revoked or denied by competent State authority'')]. The DEA, therefore, has consistently held that the CSA requires the DEA to revoke the registration of a practitioner who no longer possesses a state license to handle controlled substances. *See e.g. Joseph Baumstarck,* 74 FR 17,525, 17,527 (DEA 2009) (''a practitioner may not maintain his DEA registration if he lacks authority to handle controlled substances under the laws of the state in which he practices''); *Roy Chi Lung, M.D.,* 74 FR 20,346 (DEA 2009); *Gabriel Sagun Orzame, M.D.,* 69 FR 58,959 (DEA 2004); *Alton E. Ingram, Jr., M.D.,*

[1] Although the Respondent mentioned an attorney in her request for a hearing and in her request for an extension of time, no attorney has entered a notice of appearance for Respondent in this case.

69 FR 22,562 (DEA 2004); *Graham Travers Schuler, M.D.,* 65 FR 50,570 (DEA 2000); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (DEA 1993).

DEA has also held that revocation by summary disposition is proper when the parties agree that the respondent lacks state authority to handle controlled substances. *Michael G. Dolin, M.D.,* 65 FR 5,661, 5,662 (DEA 2000) (''where no questions of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory'') (citing *Jesus R. Juarez, M.D.,* 62 FR 14,945 (1997); *Philip E. Kirk, M.D.,* 48 FR 32,887 (DEA 1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984)).

Here, it is undisputed that Respondent is without state authority to handle controlled substances. Notably, Respondent's COR only authorizes her to handle controlled substances in South Carolina. [Gov't Mot. Attach. 1 at 1]. However, in her request for a hearing, Respondent acknowledged that she has no authority to handle controlled substances in the state, noting that she hopes to have her license reinstated ''[a]fter more than 18 months of having a suspended medical license in the state of South Carolina.'' Also, the Government attached to its Motion a copy of the South Carolina Board's order suspending Respondent's medical license ''pending further Order of the Board.'' [Gov't Mot. Attach. 2 at 1]. Respondent has not responded to the Government's Motion and therefore has offered no evidence that any ''further Order of the Board'' has been issued. I therefore find that Respondent lacks state authority to handle controlled substances because her medical license in South Carolina is suspended.

III. Conclusion, Order, and Recommendation

Because there is no genuine dispute that the Respondent currently lacks state authority to handle controlled substances, summary disposition for the Government is appropriate.

Accordingly, I *hereby*

Grant the Government's Motion.

I also forward this case to the Deputy Administrator for final disposition. I recommend that the Respondent's DEA Certificate of Registration, Number BM8500452, be revoked and any pending renewal applications for this registration be denied.

Dated: February 19, 2014

s/ Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2014–09962 Filed 4–30–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gregory White, M.D.; Decision and Order

On December 18, 2013, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Gregory White, M.D. (Registrant), of Redding, California. The Show Cause Order proposed the revocation of Registrant's Certificate of Registration BW7606619, and the denial of any pending application to renew or modify his registration, on the ground that he is no longer authorized to handle controlled substances in California, the State in which he is registered with DEA. Show Cause Order at 1(citing 21 U.S.C. 823(f) & 824(a)(3)).

The Show Cause Order alleged that Registrant is registered with the DEA as a practitioner in Schedules II–V, at the registered address of 473 South Street, Redding, California 96001, and that his registration does not expire until May 31, 2016. *Id.* at 1. The Show Cause Order then alleged that on May 21, 2013, the Medical Board of California (MBC) issued an accusation against Registrant, seeking to revoke or suspend his state medical license. *Id.*

Next, the Show Cause Order alleged that on September 13, 2013, an administrative law judge (ALJ) with the State's Office of Administrative Hearings (hereinafter, OAH) issued an order granting the MBC's Petition for an Ex Parte Interim Suspension Order, which immediately suspended Registrant's license to practice medicine. *Id.* The Show Cause Order further alleged that on October 9, 2013, the OAH ALJ issued a Decision and Order, which suspended Registrant's license to practice medicine in the State of California and scheduled a hearing for June 30 through August 8, 2014. *Id.* at 1. The Show Cause Order thus alleged that Registrant does not have a valid license to handle controlled substances as required by state law, and that he is therefore currently without authority to handle controlled substances in the State in which he is registered with the DEA. *Id.* at 2 (citing Cal. Health & Safety Code section 11000 *et seq.;* Cal. Bus. & Prof. Code section 2000 *et seq.*). The Show Cause Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43).

On December 19, 2013, a DEA Special Agent personally served the Order to Show Cause on Registrant. GX 6, at 1. Since the date of service, neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. Because more than thirty (30) days have passed since service of the Show Cause Order, I conclude that Registrant has waived his right to a hearing or to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Order based on relevant material contained in the record submitted by the Government. I make the following factual findings.

Findings

Registrant is the holder of DEA Certificate of Registration BW7606619, pursuant to which he is authorized to dispense controlled substances in schedules II through V. GX 2, at 1. Registrant also holds an identification number as a Data-Waived Practitioner. *Id.* Registrant last renewed his registration on April 15, 2013, and his registration does not expire until May 31, 2016. *Id.*

On September 13, 2012, the MBC filed an Accusation against Registrant's California Physician's and Surgeon's Certificate, and on May 21, 2013, the MBC filed a First Amended Accusation which raised extensive allegations regarding his prescribing of controlled substances to five patients. GX 3; GX 5, at 3.

On some date which is not clear on the record, the MBC filed a Petition for an Ex Parte Interim Suspension Order. GX 4, at 1. On September 13, 2013, a state ALJ conducted a hearing, after which she concluded that Registrant ''is unable to practice safely due to violations of the Medical Practice Act,'' that permitting him ''to continue to engage in the practice of medicine will endanger the public health, safety, and welfare,'' and that ''[s]erious injury would result to the public before the matter can be heard on notice.'' *Id.* at 2. The ALJ then ordered that Registrant's state medical license be immediately suspended pending a further hearing. *Id.*

On October 2, 2013, the state ALJ conducted that hearing (at which both parties put on evidence), after which she concluded that: (1) The MBC had established that there was ''a reasonable probability that [it would] prevail if an accusation is filed against'' Registrant, and (2) ''the likelihood of injury to the public in not issuing an [immediate suspension order] outweighs the likelihood of injury to respondent in issuing the order.'' GX 5, at 9.

Accordingly, the state ALJ granted the MBC's petition and suspended Registrant's California medical license and thus prohibited him from practicing medicine in the State pending a final decision on the accusation. *Id.* at 12 [1] (citing Cal. Govt. Code § 11529(f) (West 2013)). An internet search of the MBC's public record actions Web page found the following entry for Registrant: ''Full interim suspension order issued—no practice.''

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 ''upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, ''DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration.'' *Richard H. Ng,* 77 FR 29694, 29695 (2012).

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f).

Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has further held that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). This is so even where the practitioner's state authority has been suspended prior to a hearing on the merits of the State's accusation and at which, the practitioner may ultimately prevail. *See, e.g., Ng,* 77 FR 29695 (citations omitted).

Because Registrant is no longer licensed to practice medicine and to dispense controlled substances in California, the State in which he is registered with DEA, under the CSA, he is no longer entitled to hold his registration. Accordingly, I will order that his registration and X-number be revoked and that any pending applications be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration BW7606619 and Data-Waiver Identification Number XW7606619 issued to Gregory White, M.D., be, and they hereby are, revoked. I further order that any pending application of Gregory White, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[2]

Date: April 21, 2014.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2014–09961 Filed 4–30–14; 8:45 am]

BILLING CODE 4410–09–P

[1] The Order also scheduled the final hearing on the MBC's accusation for June 30 through August 8, 2014. GX 5, at 3.

[2] For the same reasons that the State of California has immediately suspended Registration's medical license, I conclude that the public interest necessitates that my Order be effective immediately. *See* 21 CFR 1316.67.

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OVC) Docket No. 1656]

Meeting of the National Coordination Committee on the American Indian/Alaska Native Sexual Assault Nurse Examiner—Sexual Assault Response Team Initiative

AGENCY: Office for Victims of Crime, JPO, DOJ.

ACTION: Notice of meeting.

SUMMARY: The National Coordination Committee on the American Indian/Alaska Native (AI/AN) Sexual Assault Nurse Examiner (SANE)—Sexual Assault Response Team (SART) Initiative (''National Coordination Committee'' or ''Committee'') will meet to carry out its mission to provide valuable advice to assist the Office for Victims of Crime (OVC) to promote culturally relevant, victim-centered responses to sexual violence within AI/AN communities.

DATES: *Dates and Locations:* The meeting will be held via webinar on Monday, May 19, 2014. The Webinar is open to the public for participation. There will be a designated time for the public to speak, and the public can observe and submit comments in writing to Shannon May, the Designated Federal Official. Webinar space is limited. To register for the webinar, please provide your full contact information to Shannon May (contact information below).

FOR FURTHER INFORMATION CONTACT: Shannon May, Designated Federal Officer (DFO) for the National Coordination Committee, Federal Bureau of Investigation, Office for Victim Assistance, 935 Pennsylvania Ave NW., Room 3329, Washington, DC 20535; Phone: (202) 323–9468 [note: this is not a toll-free number]; Email: *shannon.may@ic.fbi.gov*.

SUPPLEMENTARY INFORMATION: The National Coordination Committee on the American Indian/Alaskan Native (AI/AN) Sexual Assault Nurse Examiner (SANE)—Sexual Assault Response Team (SART) Initiative (''National Coordination Committee'' or ''Committee'') was established by the Attorney General to provide valuable advice to OVC to encourage the coordination of federal, tribal, state, and local efforts to assist victims of sexual violence within AI/AN communities, and to promote culturally relevant, victim-centered responses to sexual violence within those communities.

Webinar Agenda: The agenda will include: (a) traditional welcome and introductions; (b) remarks from the Director of OVC; (c) updates on OVC, FBI, and IHS efforts since the March 25, 2014, Committee meeting via webinar; (d) Committee review and discussion of its proposed recommendations report to the U.S. Attorney General; (e) comments by members of the public; and (f) a traditional closing.

Shannon May,

Project Manager—Victims of Crime, National Coordinator, AI/AN SANE–SART Initiative, Designated Federal Official—National Coordination Committee, Federal Bureau of Investigation, Office for Victim Assistance.

[FR Doc. 2014–10005 Filed 4–30–14; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*). This is the second notice for public comment; the 60-day **Federal Register** notice was published for public comment on April 9, 2013, at 78 FR 21162, and amended on April 12, 2013, at 78 FR 21979. No comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at *http://www.reginfo.gov/public/do/PRAMain.*

Comments: Comments regarding (a) Whether the proposed collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 7th Street NW., Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

DATES: 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 may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a 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.

SUPPLEMENTARY INFORMATION:

Title of Collection: Early Career Doctorates Survey.

OMB Approval Number: 3145–NEW.

Type of Request: Intent to seek approval for new information collection for three years.

1. *Abstract:* The National Center for Science and Engineering Statistics (NCSES) was established within the NSF by Section 505 of the America COMPETES Reauthorization Act of 2010. NCSES serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, and research and development for use by practitioners, researchers, policymakers, and the public. The Early Career Doctorates Survey will become part of an integrated survey system that meets the human resources part of this mission.

The Early Career Doctorates Project was established to gather in-depth information about early career doctorates (ECD), including postdoctoral researchers (postdocs). Early career doctorates are critical to the success of the U.S. scientific enterprise and will influence U.S. and global scientific markets for years to come. Despite their importance, current surveys of this population are limited, and extant workforce studies are insufficient for all doctorates who contribute to the U.S. economy. The NSF's Survey of Earned Doctorates and the Survey of Doctorate Recipients are limited to individuals who received research doctorates from U.S. academic institutions, thereby excluding individuals who earned professional doctorates and those who earned doctorates from institutions outside the United States but are currently employed in the United States. The NSF's Survey of Graduate Students and Postdoctorates in Science and Engineering (GSS) provides aggregate level data for all postdocs and nonfaculty researchers regardless of where they earned the degree. However, the GSS is limited to science, engineering, and selected health (SEH) fields in U.S. academic institutions and their related research facilities and is collected at the program rather than the individual level.

Through its multi-year Postdoc Data Project, NCSES determined the need for and the feasibility of gathering information about postdocs and ECD working in the United States. Efforts to reliably identify and gather information about postdocs proved difficult due to substantial variation in how institutions characterize postdoc appointments. As a result, NCSES expanded the target population to include all individuals who earned their first doctorate within the past 10-years, defined as ECD. Expanding the population to doctoral degree holders ensures a larger, more consistent and reliable target population. Unique in scope, the key goals of the ECD Project are:

- To broaden the scope and depth of national statistics on the ECD population both U.S. degreed and non-U.S. degreed, across employment sectors and fields of discipline
- To collect nationally representative data from ECD that can be used by funding agencies, policy makers, and other researchers to better understand the labor markets and work experiences of recent doctorate recipients
- To establish common definitions for different types of ECD (e.g., postdocs, junior faculty, and other nonfaculty researchers) that can be applied across and within employment sectors

The current focus of the Early Career Doctorates Project is to conduct a survey of ECD working in three areas of employment: U.S. academic institutions, Federally Funded Research and Development Centers, and the National Institutes of Health Intramural Research Programs. NCSES, under generic clearance (OMB #3145–0174), conducted a methodological study to test a data collection strategy that uses institutional contacts as the conduit for questionnaire dissemination to ECD in the above employment settings. This data collection strategy will be used in the survey of ECD (ECDS). The survey will be a two stage sample survey design.

Beginning in June 2014, NSF will collect lists of ECD from 201 institutions nationwide, then sample and survey 8,250 ECD from these lists. Sample members will be invited to participate in a 30-minute web-based questionnaire. The survey will cover: Educational achievement, professional activities, employer demographics, professional and personal life balance, mentoring, training and research opportunities, and career paths and plans. Participation in the survey is voluntary. All information will be used for statistical purposes only.

The NSF will publish statistics from the survey in several reports, including NCSES' *Science and Engineering Indicators* report. These reports will be

made available in print and electronically on the NSF Web site. Restricted-use and public use data files will also be developed.

The survey will be collected in conformance with the Privacy Act of 1974 and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA). Responses from individuals are voluntary. The NSF will ensure that all individually identifiable information collected will be kept strictly confidential and will be used for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* There are four types of respondents to the survey: Institutional high authority (HA), list coordinator (LC), ECD contactor (EC), and individual ECD. The HA, LC, and EC are involved at the first stage of the sample survey design. At each institution, a high authority (HA) will authorize the institution's participation in the study, designate a list coordinator (LC) and an ECD contactor (EC), and provide a letter of support for the survey. The primary responsibility of the LC is to prepare a list of ECD employed at the institution. The LC will provide a list of all ECD, that is, individuals working at their institution who earned their first doctorate or doctorate-equivalent degree within the past 10 years, including postdocs, nonfaculty researchers, tenured or tenure-track faculty members.

In the second stage, the EC will notify the sampled individual of their selection and NSF will survey these individuals. The survey will sample 8,250 ECD from 201 institutions. It is expected that 80% of the sampled ECD will participate, yielding 6,600 ECD respondents.

3. *Estimate of Burden:* In the methodological study, HAs required 1 hour on average to complete these tasks while the LCs required an average of 6 hours to fulfill their duties. Assuming that 100% of the institutions will participate, we estimate the total HA burden to be 201 hours and total burden for LCs is 1,206 hours. Most ECs were able to complete this task in less than 30 minutes in the methodological study. It is expected that 5% of the sampled institutions will choose to have NSF contact the ECD directly without involvement of ECs. We estimate a total burden of 96 hours for ECs.

NCSES estimates that respondents will take 30 minutes on average to complete the questionnaire based on the time to completion data from the methodological study. Assuming 6,600 respondents, we estimate the total burden for ECD to be 3,300 hours.

Taking into account all four respondent types (HAs, LCs, ECs, and ECD), we estimate the total respondent burden to be 4,803 hours. The below table showed the estimated burden by stage and respondent type.

ECDS Estimated Burden by Stage and Respondent Type

Respondent type	Minutes per respondent	Number of respondents	Expected response rate (%)	Estimated total hours
Stage 1: Frame Creation:				
High Authority (HA)	60	201	100	201
List Coordinator (LC)	360	201	100	1,206
Subtotal				*1,407*
Stage 2: ECD Survey:				
ECD Contactor (EC)	30	201	95	96
Early Career Doctorate (ECD)	30	8,250	80	3,300
Subtotal				*3,396*
Total				4,803

Date: April 28, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–09954 Filed 4–30–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of meetings for the transaction of National Science Board business, as follows:

DATE AND TIME: May 6, 2014 from 8:00 a.m. to 4:00 p.m., and May 7 from 8:30 a.m. to 3:15 p.m.

PLACE: These meetings will be held at the National Science Foundation, 4201Wilson Blvd., Rooms 1235, Arlington, VA 22230. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide name and organizational affiliation. Visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

WEBCAST INFORMATION: Public meetings and public portions of meetings will be webcast. To view the meetings, go to *http://www.tvworldwide.com/events/nsf/140506* and follow the instructions.

UPDATES: Please refer to the National Science Board Web site for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Nadine Lymn, *nlymn@nsf.gov,* (703) 292–2490.

STATUS: Portions open; portions closed.

OPEN SESSIONS:

May 6, 2014

8:00–8:05 a.m. (Chairman's introduction)
8:05–10:15 a.m. (CPP)
10:30–11:30 a.m. (A&O)
11:30 a.m.–12:10 p.m. (Plenary)
1:00–1:40 p.m. (SCF)
2:45–3:00 p.m. (CSB)
3:00–4:00 p.m. (SEI)

May 7, 2014

10:45–11:00 a.m. (CPP)
11:00–11:20 a.m. (Plenary)
2:15–3:15 p.m. (Plenary)

CLOSED SESSIONS:

May 6, 2014

1:40–2:15 p.m. (SCF)
2:15–2:45 p.m. (CSB)

May 7, 2014

8:30–9:00 a.m. (Plenary executive closed)
9:00–10:15 a.m. (CPP)
12:30 a.m.–1:30 p.m. (Plenary closed)

MATTERS TO BE DISCUSSED:

Tuesday, May 6, 2014

Committee on Programs and Plans (CPP)

Open Session: 8:05–10:15 a.m.

- Approval of open CPP minutes and open Joint CPP–CSB minutes for February 2014
- Committee Chairman's remarks—including updated annual CY 2014 schedule of action and information items for NSB review and MREFC/NSB process, Regional Class Research Vessels
- NSB Information Item: National Solar Observatory (NSO)
- NSB Information Item: Division of Material Research briefing on the National Research Council Magnet Science report
- NSB Information Item: GEO Vision: Strategic planning process in the Geosciences

Audit and Oversight Committee (A&O)

Open Session: 10:30–11:30 a.m.

- Approval of February 2014 open meeting minutes
- Committee Chairman's opening remarks
- NSF FY 2013 Merit Review report
- Inspector General's update, including
  - FY 2014 Financial Statement Audit plans
- Chief Financial Officer's update
- Committee Chairman's closing remarks

Plenary Board Meeting

Open Session: 11:30–12:10 a.m.

- Presentation by Honorary Award Recipients
  - NSB Public Service Award—Group, AAAS Science and Technology Policy Fellowship Program, Ms. Cynthia Robinson
  - Vannevar Bush Award, Dr. Richard Tapia

CSB Subcommittee on Facilities (SCF)

Open Session: 1:00–1:40 p.m.

- Chairman's remarks and approval of the open February 2014 meeting minutes, and January 16 and February 6 teleconference meeting minutes
- Discussion of Proposed FY 2013 APR recommendations
- Discussion of Facility Plan draft templates
- FY 2014 APR of Facilities

CSB Subcommittee on Facilities (SCF)

Closed Session: 1:40–2:15 p.m.

- Discussion of Regional Class Research Vessels

Committee on Strategy and Budget (CSB)

Closed Session: 2:15–2:45 p.m.

- Committee Chairman's remarks
- Approval of CSB closed minutes for the February 2014 meeting
- FY 2014 budget update
- FY 2016 budget development

Committee on Strategy and Budget (CSB)

Open Session: 2:45–3:00 p.m.

- Committee Chairman's remarks
- Approval of CSB open minutes for the February 2014 meeting, and the open CPP–CSB Joint Minutes for the February 2014 meeting
- NSF FY 2014 budget update
- NSF FY 2015 budget update
- Subcommittee on Facilities (SCF) Chairman's report

Committee on Science & Engineering Indicators (SEI)

Open Session: 3:00–4:00 p.m.

- Committee Chairman's introduction and approval of the February 2014 meeting minutes
- Update on *Science and Engineering Indicators 2014*-related outreach activities
- Discussion of the companion report to *Indicators 2014*
- ''Digital Indicators'' project status update
- Chairman's closing remarks

Wednesday, May 7, 2014

Plenary Board Meeting

Executive Closed Session: 8:30–9:00 a.m.

- Approval of executive closed session minutes, February 2014 meeting
- Election of NSB Chairman and Vice Chairman
- Chairman's remarks

Committee on Programs and Plans (CPP)

Closed Session: 9:00–10:15 a.m.

- Committee Chairman's remarks
- Approval of closed CPP minutes for February 2014
- NSB Action Item: Large Synoptic Survey Telescope (LSST)
- NSB Information Item: Polar issues/Antarctic update

Committee on Programs and Plans (CPP)

Open Session: 10:45–11:00 a.m.

- NSB Information Item: Polar issues/Antarctic update

Plenary Board Meeting

Open Session: 11:00–11:20 a.m.

- Presentation by Honorary Award Recipient
  - NSB Public Service Award—Individual, Dr. Arthur Caplan

Plenary Board Meeting

Closed Session: 12:30–1:30 p.m.

- Approval of closed session minutes, February 2014
- Discussion on risks to NSF
- Awards and Agreements/CPP Action Item
- Closed committee reports
- Chairman's remarks

Plenary Board Meeting

Open Session: 2:15–3:15 p.m.

- Approval of open session minutes, February 2014
- Chairman's report
- Director's report
- Open committee reports
- Chairman's remarks

MEETING ADJOURNS: 3:15 p.m.

Ann Bushmiller,
Senior Counsel to the National Science Board.

[FR Doc. 2014–10014 Filed 4–29–14; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 8–10, 2014, 11545 Rockville Pike, Rockville, Maryland.

Thursday, May 8, 2014, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Human Reliability Analysis (HRA) Method Development and Progress (Open)—The Committee will hear presentations by and hold discussions with representatives of the Nuclear

Regulatory Commission (NRC) staff regarding the psychological foundation for HRA and an Integration Decision-tree Human Event Analysis System (IDHEAS) methodology for generic nuclear power plant (NPP) operations.

10:45 a.m.–11:45 a.m.: Overview of the Early Site Permit (ESP) Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the ESP process.

12:30 p.m.–2:00 p.m.: Meeting with Commissioner Magwood (Open)—The Committee will discuss items of mutual interest with Commissioner Magwood.

2:15 p.m.–4:15 p.m.: SECY–14–0016, ''Ongoing Staff Activities to Assess Regulatory Considerations for Power Reactor Subsequent License Renewal'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding ongoing activities related to Subsequent License Renewal.

4:15 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. The Committee will also consider a response to the February 24, 2014, letter from the Executive Director for Operations regarding Chapters 6 and 7 of the Safety Evaluation Report with Open Items for Certification of the US–APWR design and related long term core cooling issues.

Friday, May 9, 2014, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting. The Committee will also consider a response to the February 24, 2014, letter from the Executive Director for Operations regarding Chapters 6 and 7 of the Safety Evaluation Report with Open Items for Certification of the US–APWR design and related long term core cooling issues.

Saturday, May 10, 2014, Conference Room T–2B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–10:00 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters discussed during this meeting. The Committee will also consider a response to the February 24, 2014, letter from the Executive Director for Operations regarding Chapters 6 and 7 of the Safety Evaluation Report with Open Items for Certification of the US–APWR design and related long term core cooling issues.

10:00 a.m.–12:00 p.m.: Miscellaneous (Closed)—The Committee will discuss matters related to the conduct of Committee activities and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 FR 67205–67206). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (Agencywide Documents Access and Management System) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Date: April 25, 2014.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2014–09991 Filed 4–30–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of modification to existing systems of records.

SUMMARY: The United States Postal Service® (Postal Service) is proposing to modify a Customer Privacy Act System of Records (SOR) to support the enforcement of United States customs, export control, and export statistics laws

with regards to mailpieces exported from the United States.

Additionally, the Postal Service is establishing a new Customer Privacy Act SOR to enable the collection and maintenance of electronic customs information received from foreign postal operators with regard to inbound, international mail pieces. Such information is intended to support domestic customs, operations, and other processes related to the international exchange of mail.

DATES: These revisions will become effective without further notice on June 2, 2014 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Privacy and Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 9517, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Matthew J. Connolly, Chief Privacy Officer, Privacy and Records Office, 202–268–8582 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service™ has determined that one Customer Privacy Act System of Records should be revised to modify categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, purpose(s), routine uses of records in the system, including categories of users and the purpose of such uses, retrievability, and system manager(s) and address. Additionally, the Postal Service is creating a new Customer Privacy Act System of Records for customs data on inbound international mailpieces mailed from international locations to the United States.

I. Background

The Postal Service currently collects, stores, and retrieves electronic customs declaration information on mailpieces exported from the United States. This information is provided to domestic customs officials to support United States export requirements. To facilitate the entry and movement of mail throughout the world, the Postal Service also intends to send customs declaration information to postal operators as well as intermediary companies involved in electronic data exchanges.

Furthermore, to facilitate the importation of items into the United States through customs control, the Postal Service is entering into agreements with foreign postal operators that will permit parties to the agreements (*i.e.,* postal operators) to exchange information on international shipments. To enable the Postal Service to maintain and use data received from foreign postal operators pursuant to these agreements, and to ensure that such information is maintained in accordance with the restrictions contained in those agreements, the Postal Service is establishing a new SOR, USPS 900.100, Customs Data Received from Foreign Posts.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing several modifications to SOR 900.000. First, the SOR is being amended to reflect that the Postal Service intends to maintain information on customers shipping to or from international locations as well as customers receiving items shipped to or from international locations. Second, the Postal Service is updating the categories of records in the SOR to account for the collection of additional types of shipment-specific information that is supplied by customers on current customs declaration forms. To complement these changes, the Postal Service is also clarifying that records may be retrieved by any information supplied by the customer on such forms.

Third, the Postal Service is modifying the SOR to enable information maintained in this system to be used to facilitate the enforcement of domestic customs, export control, and export statistics laws. Finally, the Postal Service is amending standard routine use (a) to permit the sharing of information in this system with foreign postal operators and intermediary companies involved in electronic data exchanges with those foreign customs agencies and postal operators. Additional clarifications specify that records are shared with domestic export control agencies. Collectively, these changes are intended to enhance the Postal Service's role in facilitating the movement of cross-border mail, while ensuring that customs and export requirements, as well as governmental objectives for trade statistics reporting, are fulfilled. Technical corrections are also being made to the sections on legal authority and system managers.

As mentioned above, the Postal Service is entering into agreements with foreign postal operators that will permit parties to the agreements (*i.e.,* postal operators) to exchange information on international shipments. SOR 900.100, Customs Data Received from Foreign Posts, will allow the Postal Service to receive and maintain electronic information supplied by foreign posts on mailings sent from foreign jurisdictions to domestic recipients. To facilitate enforcement of domestic customs laws and regulations, the Postal Service intends to disclose such information to domestic customs officials, subject to the conditions of any agreement between the Postal Service and a foreign postal operator transmitting customs data to the Postal Service.

III. Description of Changes to Systems of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modifications has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. The affected systems are as follows:

USPS 900.000

SYSTEM NAME: International Services

IV. Description of New System of Records

The United States Postal Service is adding a new system of records to its Customer Privacy Act Systems of Records Management System. This new system of records is being established to account for information being collected and stored for inbound international mail and packages. The Postal Service proposes adding the system as shown below:

USPS 900.100

SYSTEM NAME: Customs Data Received from Foreign Posts

Accordingly, for the reasons stated, the Postal Service proposes changes in the existing system of records as follows:

USPS 900.000

SYSTEM NAME:

[CHANGE TO READ]

USPS International Services

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[CHANGE TO READ]

USPS customers shipping to or from international locations. Customers receiving items shipped to or from international locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

[CHANGE TO READ]

3. *Information pertaining to mailings:* Information supplied through customs declaration forms: Contents, quantity, order number, volume, destination, weight, country of origin, value, Harmonized Commodity Description and Coding System (HS) Tariff number, license or certificate number, Automated Export System (AES) internal transaction number or exemption, signature, date, postage and fees, and type of mailing.

4. Customs barcode scan data.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

[CHANGE TO READ]

39 U.S.C. 401, 403, 404, and 407; 13 U.S.C. 301–307; Section 343(a) of the Trade Act of 2002, Public Law 107–210, and 50 U.S.C. 1702.

PURPOSE:

* * * * *

[CHANGE TO READ]

4. To satisfy reporting requirements for customs purposes.

5. To support enforcement of U.S. customs, export control, and export statistics laws.

* * * * *

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

* * * * *

[CHANGE TO READ]

a. Customs declaration records may be disclosed to domestic export control and customs agencies and foreign customs agencies and postal operators, as well as intermediary companies involved in electronic data exchanges.

RETRIEVABILITY:

[CHANGE TO READ]

By customer name(s) or address(es) (sender or recipient), ID number(s), information supplied through customs declaration forms, and barcode tracking number(s).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[DELETE TEXT]

Vice President, Global Business, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

[ADD NEW TEXT]

Vice President, Network Operations, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

[ADD NEW TEXT/SYSTEM OF RECORD]

USPS 900.100

SYSTEM NAME:

Customs Data Received From Foreign Posts

SYSTEM LOCATION:

USPS Headquarters, Integrated Business Solutions Services Centers, and USPS facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers shipping from international locations. Customers receiving items shipped from international locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. The S10 13-character item identifier or any bilaterally agreed identifier.

2. The full name and postal address of the mailer.

3. The name and postal address of the intended recipient.

4. The gross weight of the item.

5. The total value of the item with the currency used.

6. The nature of the content (gift, document, a commercial sample, or some other content).

7. For each distinct type of content of the item: Its description, the quantity and unit of measurement, its value, and its net weight.

8. For commercial items: The HS tariff number, the country of origin of the goods.

9. For items that require a Universal Postal Union (UPU) customs declaration form CN23: The importer's reference and details; the type and identifier of each document accompanying the item (invoice, certificate, license, authorization for goods subject to quarantine or other documents depending on the content and origin and destination of the item); other information and observations provided by the mailer and relevant for customs control, including, but not limited to, information about quarantine restrictions and the numbers of any licenses related to the item.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 404, and 407; Section 343(a) of the Trade Act of 2002, P.L. 107–210, and international agreements or regulations.

PURPOSE(S):

1. To collect data necessary for customs purposes.

2. To support processes related to the international exchange of mail.

3. To support operational purposes.

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

Standard routine uses 1. through 7., 10., and 11.

In addition:

Customs declaration records may be disclosed to domestic customs officials. When USPS has executed an agreement with a foreign postal operator for the exchange of customs declaration records, discretionary routine use disclosures for records exchanged in accordance with the agreement may be further restricted to extent provided by the agreement.

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

Automated databases, computer storage media, and digital and paper files.

RETRIEVABILITY:

1. The S10 13-character item identifier or any bilaterally agreed identifier.

2. The full name and postal address of the mailer.

3. The name and postal address of the intended recipient.

4. The gross weight of the item.

5. The total value of the item with the currency used.

6. The nature of the content (gift, document, a commercial sample, or some other content).

7. For each distinct type of content of the item: Its description, the quantity and unit of measurement, its value, and its net weight.

8. For commercial items: The HS tariff number, the country of origin of the goods.

9. For items that require a Universal Postal Union (UPU) customs declaration form CN23: The importer's reference and details; the type and identifier of each document accompanying the item (invoice, certificate, license, authorization for goods subject to quarantine or other documents depending on the content and origin and destination of the item); other information and observations provided by the mailer and relevant for customs control, including, but not limited to, information about quarantine restrictions and the numbers of any licenses related to the item.

SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RETENTION AND DISPOSAL:

Customs declaration records stored in electronic data systems are retained 5 years, and then purged according to the requirements of domestic and foreign customs services.

Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Network Operations, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

NOTIFICATION PROCEDURE:

Customers wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the system manager, and include their name and address.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See *Notification Procedure* and *Record Access Procedures* above.

RECORD SOURCE CATEGORIES:

Customers and USPS personnel.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–09906 Filed 4–30–14; 8:45 am]

BILLING CODE 7710–12–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.

Title and purpose of information collection: Pension Plan Reports; OMB 3220–0089.

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employee receives monthly pension payments, or a lump-sum pension payment from a private pension from a railroad employer, to the extent the payments are based on contributions from that employer. The employee's own contribution to their pension account does not cause a reduction. A private railroad employer pension is defined in 20 CFR 216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such plans cause reductions to the supplemental annuity; (b) whether the employee receives monthly payments from a private railroad employer pension, elected to receive a lump-sum in lieu of month pension payments from such a plan; (c) the date monthly pension payments began or a lump-sum payment was received; and (d) the amount of the payments attributable to the railroad employer's contributions. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form G–88p, *Employer's Supplemental Pension Report,* and Form G–88r, *Request for Information About New or Revised Employer Pension Plan,* to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

The RRB proposes to revise Forms G–88p and G–88r to remove information related to the reporting of 401(k) savings plans and to make other editorial changes. The RRB also proposes the implementation of an Internet equivalent version of Form G–88p that can be submitted through the Employer Reporting System.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–88p	100	8	13
G–88p (Internet)	200	6	20
G–88r	10	8	1
Total	310		34

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2014–10075 Filed 4–30–14; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31030]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 25, 2014.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2014. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 20, 2014, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Vanguard Florida Tax-Free Funds [File No. 811–6709]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Vanguard Long-Term Tax-Exempt Fund, a series of Vanguard Municipal Bond Funds, and on July 26, 2013, made a distribution to its shareholders based on net asset value. Expenses of approximately $28,356 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on March 31, 2014.

Applicant's Address: P.O. Box 876, Valley Forge, PA 19482.

2010 Swift Mandatory Common Exchange Security Trust [File No. 811–22506]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 8, 2014, applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on April 10, 2014.

Applicant's Address: c/o U.S. Bank National Association, Corporate Trust Services, Attention: 2010 Swift Mandatory Common Exchange Security Trust, 101 N 1st Avenue, Suite 1600, Phoenix, AZ 85003.

Empire State Municipal Exempt Trust [File No. 811–2838]

Summary: Applicant, a unit investment company, seeks an order declaring that it has ceased to be an investment company. On April 2, 2013, applicant made a final liquidating distribution to its unitholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on April 8, 2014.

Applicant's Address: 546 Fifth Ave., New York, NY 10036.

Advantage Advisers Whistler Fund, LLC [File No. 811–9425]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 31, 2013, applicant transferred its assets and liabilities to a Delaware liquidating trust, based on net asset value. Each member of applicant has received a pro rata beneficial interest in the liquidating trust based on the capital account percentage in applicant held by such member as of December 31, 2013. Expenses of $75,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on January 23, 2014, and amended on April 4, 2014.

Applicant's Address: 85 Broad St., 24th Floor, New York, NY 10004.

Endowment Fund, Inc. [File No. 811–21723]

Endowment Institutional TEI Fund, LP [File No. 811–22639]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on April 9, 2014.

Applicants' Address: 4265 San Felipe, 8th Floor, Houston, TX 77027.

Mint Group 8 [File No. 811–4190–01]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 21, 2012, applicant made its final liquidating distribution to its unitholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on March 6, 2013, and amended on April 8, 2014.

Applicant's Address: 6 East 43rd St., New York, NY 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09971 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31029; 812–14144]

Steben Select Multi-Strategy Fund and Steben & Company, Inc.; Notice of Application

April 25, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act and for an order pursuant to

section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest (''Shares'') and to impose asset-based service and/or distribution fees and contingent deferred sales loads (''CDSCs'').

APPLICANTS: Steben Select Multi-Strategy Fund (the ''Fund'') and Steben & Company, Inc. (the ''Adviser'').

DATES: *Filing Dates:* The application was filed on April 5, 2013, and amended on March 21, 2014 and April 17, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 20, 2014, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Francine J. Rosenberger, Esq., Steben & Company, Inc., 9711 Washingtonian Boulevard, Suite 400, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund is a continuously offered non-diversified closed-end management investment company registered under the Act and organized as a Delaware statutory trust. The Fund operates as a feeder fund in a master-feeder structure and invests substantially all of its assets in the Steben Select Multi-Strategy Master Fund (the ''Master Fund''). The Master Fund invests in non-traditional or ''alternative'' strategies which may include investment funds commonly referred to as ''hedge funds.''

2. The Adviser, a Maryland corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 and will serve as investment adviser to the Fund. A broker-dealer registered under the Securities Exchange Act of 1934 (''1934 Act'') will act as the principal underwriter for the distribution of Shares [1] of the Fund (the ''Distributor''). The Adviser, which is a registered broker-dealer, may serve as the Distributor or the Distributor may be an affiliated person, as defined in section 2(a)(3) of the Act, of the Adviser.

3. The Fund continuously offers its Shares to the public under the Securities Act of 1933, as amended. Shares of the Fund are not listed on any securities exchange and do not trade on an over-the-counter system such as Nasdaq. Applicants do not expect that any secondary market will develop for the Shares.

4. The Fund currently offers a single class of Shares at net asset value per share plus a servicing fee.[2] The Fund proposes to offer multiple classes of Shares at net asset value per share that may (but would not necessarily) be subject to a front-end sales load, an annual asset-based service and/or distribution fee, a minimum purchase requirement and/or an Early Withdrawal Fee (defined below), in each case as set forth in the Fund's prospectus.

5. In order to provide a limited degree of liquidity to shareholders, the Fund may from time to time offer to repurchase Shares at their then current net asset value in accordance with rule 13e–4 under the 1934 Act pursuant to written tenders by shareholders. Repurchases will be made at such times, in such amounts and on such terms as may be determined by the Fund's board of trustees (''Board''), in its sole discretion.[3] The Adviser expects to ordinarily recommend that the Board authorize the Fund to offer to repurchase Shares from shareholders quarterly.

6. Applicants request that the order also apply to any other continuously offered registered closed-end management investment company existing now or in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser acts as investment adviser, and which provides periodic liquidity with respect to its Shares through tender offers conducted in compliance with rule 13e–4 under the 1934 Act.[4]

7. Applicants represent that any asset-based service and/or distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rule 2830'') as if that rule applied to the Fund.[5] Applicants also represent that the Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of Shares offered for sale by the prospectus as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, the Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[6] The Fund will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale

[1] ''Shares'' includes any other equivalent designation of a proportionate ownership interest of the Fund (or any other registered closed-end management investment company relying on the requested order).

[2] Before relying on the relief requested in the application, the Fund will convert the servicing fee currently charged to holders of its current class of Shares to an asset-based service and/or distribution fee that complies with rule 12b–1 under the Act.

[3] Shares will be subject to an early withdrawal fee at a rate of 2% of the aggregate net asset value of the shareholder's Shares repurchased by the Fund (the ''Early Withdrawal Fee'') if the interval between the date of purchase of the Shares and the valuation date with respect to the repurchase of those Shares is less than one year. The Early Withdrawal Fee will apply equally to all shareholders of the Fund, regardless of class, consistent with section 18 of the Act and rule 18f–3 under the Act. To the extent the Fund determines to waive, impose scheduled variations of, or eliminate the Early Withdrawal Fee, it will do so consistently with the requirements of rule 22d–1 under the Act and apply uniformly to all shareholders of the Fund.

[4] The Fund and any other investment company relying on the requested relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the requested relief is listed as an applicant.

[5] All references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority (''FINRA'').

[6] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund.[7]

8. The Fund will allocate all expenses incurred by it among the various classes of Shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

9. In the event the Fund imposes a contingent deferred sales charge (''CDSC''), the applicants will comply with the provisions of rule 6c–10 under the Act, as if that rule applied to closed-end management investment companies. With respect to any waiver of, scheduled variation in, or elimination of the CDSC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Fund to issue multiple classes of Shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

CDSCs

1. Applicants believe that the requested relief meets the standards of section 6(c) of the Act. Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that any CDSC imposed by the Fund will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Fund also will disclose CDSCs in accordance with the requirements of Form N–1A concerning CDSCs as if the Fund were an open-end investment company. Applicants further state that the Fund will apply the CDSC (and any waivers or scheduled variations of the CDSC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

The Fund agrees that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3 and 22d–1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with the NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09927 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

[7] *See, e.g.,* Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72030; File No. SR–NASDAQ–2014–041]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the First Trust Enhanced Short Maturity ETF of First Trust Exchange-Traded Fund IV

April 25, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 24, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust Enhanced Short Maturity ETF (the ''Fund'') of First Trust Exchange-Traded Fund IV (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[4] The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at Nasdaq's principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[5] on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010.[6] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[7] The Fund will be a series of the Trust. The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.

First Trust Advisors L.P. will be the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation (''BNY'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[8] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] By Amendment No. 1, the Exchange: (1) Clarifies that the Fund (defined below) will limit its investments in asset-backed securities and non-agency mortgage-backed securities (in the aggregate) to 20% of its net assets; (2) modifies its description of how asset-backed or mortgage-backed securities will be priced in certain circumstances; and (3) makes certain grammatical corrections.

[4] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively-managed funds listed on the Exchange; *see, e.g.,* Securities Exchange Act Release Nos. 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (SR–NASDAQ–2012–147) (order approving listing and trading of First Trust High Yield Long/Short ETF); 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.,* Securities Exchange Act Release Nos. 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR–NYSEArca–2012–139) (order approving listing and trading of First Trust Preferred Securities and Income ETF); 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR–NYSEArca–2011–21) (order approving listing and trading of WisdomTree Global Real Return Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (the ''Exemptive Relief''). In addition, on December 6, 2012, the staff of the Commission's Division of Investment Management (''Division'') issued a no-action letter (''No-Action Letter'') relating to the use of derivatives by actively-managed ETFs. *See* No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under applicable provisions of and rules under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Exemptive Relief) invest in options contracts, futures contracts or swap agreements provided that they comply with certain representations stated in the No-Action Letter. However, the Fund does not intend to invest in derivatives.

[7] *See* Post-Effective Amendment No. 66 to Registration Statement on Form N–1A for the Trust, dated April 10, 2014 (File Nos. 333–174332 and 811–22559). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

First Trust Enhanced Short Maturity ETF

The investment objective of the Fund will be to seek current income, consistent with preservation of capital and daily liquidity. Under normal market conditions,[9] the Fund will seek to achieve its investment objective by investing in a portfolio of U.S. dollar-denominated fixed- and variable-rate [10] instruments (collectively, ''Fixed Income Securities'') issued by U.S. and non-U.S. public- and private-sector entities. The Fund will hold Fixed Income Securities of at least 13 non-affiliated issuers.

At least 80% of the Fund's net assets will be invested in Fixed Income Securities that are, at the time of purchase, investment grade. To be considered ''investment grade,'' under normal market conditions, short-term securities (generally securities with original maturities of one year or less) held by the Fund and rated by at least one nationally recognized statistical ratings organization (''NRSRO'') will carry, at the time of purchase, a short-term rating in the highest three rating categories of at least one NRSRO (*e.g.,* A–3, P–3 or F–3 or better by Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. (''S&P''), Moody's Investors Service, Inc. (''Moody's'') or Fitch Ratings (''Fitch''), respectively), and other rated securities will carry, at the time of purchase, a rating in the highest four rating categories of at least one NRSRO (*e.g.,* BBB- or higher by S&P and/or Fitch or Baa3 or higher by Moody's).[11] For unrated securities to be considered ''investment grade,'' under normal market conditions, such securities will be determined, at the time of purchase, to be of comparable quality [12] by the Adviser.

Principal Investments

The Fund intends to achieve its investment objective by investing, under normal market conditions, at least 80% of its net assets in a portfolio of U.S. dollar-denominated Fixed Income Securities issued by U.S. and non-U.S. public- and private-sector entities. Fixed Income Securities will include the following types of fixed- and variable-rate debt securities: corporate [13] and government bonds and notes; agency securities; [14] instruments of non-U.S. issuers in developed markets; privately-issued securities; [15] asset-backed securities; [16] mortgage-backed securities; [17] municipal bonds; money market securities; [18] and investment companies [19] (including investment companies advised by the Adviser) that invest primarily in the foregoing types

[9] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. For temporary defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[10] For these purposes, the term ''variable-rate'' also includes similar terms such as ''floating-rate'' and ''adjustable-rate.''

[11] For the avoidance of doubt, if a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO.

[12] Comparable quality of unrated securities will be determined by the Adviser based on fundamental credit analysis of the unrated security and comparable NRSRO-rated securities. On a best efforts basis, the Adviser will attempt to make a rating determination based on publicly available data. In making a ''comparable quality'' determination, the Adviser may consider, for example, whether the issuer of the security has issued other rated securities, the nature and provisions of the relevant security, whether the obligations under the relevant security are guaranteed by another entity and the rating of such guarantor (if any), relevant cash flows, macroeconomic analysis, and/or sector or industry analysis.

[13] While the Fund is permitted to invest without restriction in corporate bonds, the Adviser expects that, under normal market conditions, generally, with respect to at least 75% of the Fund's portfolio, a corporate bond will have, at the time of original issuance, $100 million or more par amount outstanding to be considered as an eligible investment.

[14] ''Agency securities'' for these purposes generally includes securities issued by the following entities: Government National Mortgage Association (Ginnie Mae), Federal National Mortgage Association (Fannie Mae), Federal Home Loan Banks (FHLBanks), Federal Home Loan Mortgage Corporation (Freddie Mac), Farm Credit System (FCS) Farm Credit Banks (FCBanks), Student Loan Marketing Association (Sallie Mae), Resolution Funding Corporation (REFCORP), Financing Corporation (FICO), and the Farm Credit System (FCS) Financial Assistance Corporation (FAC). Agency securities can include, but are not limited to, mortgage-backed securities.

[15] ''Privately-issued securities'' for these purposes generally includes Rule 144A securities and, in this context, may include both mortgage-backed and non-mortgage Rule 144A securities.

[16] Asset-backed securities are Fixed Income Securities that are backed by a pool of assets. The Fund currently intends to invest in asset-backed securities that are consumer asset-backed securities.

[17] Mortgage-backed securities are Fixed Income Securities that are backed by a pool of mortgage loans. There are a wide variety of mortgage-backed securities involving commercial or residential, fixed-rate or adjustable-rate mortgages and mortgages issued by banks or government agencies.

[18] ''Money market securities'' for these purposes generally includes: Short-term high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements; commercial paper (both asset-backed and non-asset-backed); and deposits and other obligations of U.S. and non-U.S. banks and financial institutions.

[19] The Fund currently anticipates investing only in registered open-end investment companies that are listed and traded in the U.S. on registered exchanges (*i.e.,* other ETFs). An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order obtained by the Trust and the Adviser from the Commission. *See* Investment Company Act Release No. 30377 (February 5, 2013) (File No. 812–13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETFs.

of Fixed Income Securities.[20] The Fund will limit its investments in asset-backed securities and non-agency mortgage-backed securities (in the aggregate) to 20% of its net assets.[21]

Under normal market conditions, the Fund's duration [22] is expected to be below one year and the maturity [23] of the Fund's portfolio is expected to be below three years.

Other Investments

Under normal market conditions, the Fund will invest primarily in the Fixed Income Securities described above to meet its investment objective. In addition, the Fund may invest up to 20% of its net assets in floating rate loans. The floating rate loans in which the Fund will invest will represent amounts borrowed by companies or other entities from banks and other lenders and a significant portion of such floating rate loans may be rated below investment grade or unrated. Floating rate loans held by the Fund may be senior or subordinate obligations of the borrower and may or may not be secured by collateral. The Fund will generally invest in floating rate loans that the Adviser deems to be liquid with readily available prices; notwithstanding the foregoing, the Fund may invest in floating rate loans that are deemed illiquid so long as the Fund complies with the 15% limitation on investments of its net assets in illiquid assets described below under ''Investment Restrictions''.

Investment Restrictions

The Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.[24]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser.[25] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[26]

The Fund will not invest in non-U.S. equity securities.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (''NAV'') [27] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares. As described in the Registration Statement and consistent with the Exemptive Relief, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket''). In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the National Securities Clearing Corporation (''NSCC'') or a Depository Trust Company participant that, in each case, must have executed an agreement that has been agreed to by the Distributor and BNY with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m., Eastern time) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the transfer agent and only on a business day.

The Fund's custodian, through the NSCC, will make available on each

[20] The liquidity of a security, especially in the case of asset-backed and mortgage-backed securities, is a substantial factor in the Fund's security selection process. Consistent with the discussion below under ''Investment Restrictions,'' the Fund will not purchase any Fixed Income Securities (including asset-backed securities and mortgage-backed securities) that, in the Adviser's opinion, are illiquid if, as a result, more than 15% of the value of the Fund's net assets will be invested in illiquid assets.

[21] *See* Amendment No. 1, *supra* note 3. For the avoidance of doubt, there is no limitation on the Fund's investments in agency mortgage-backed securities.

[22] Duration is a measure of the expected price volatility of a debt instrument as a result of changes in market rates of interest, based on, among other factors, the weighted average timing of the instrument's expected principal and interest payments. Duration differs from maturity in that it considers a security's yield, coupon payments, principal payments, call features and coupon adjustments in addition to the amount of time until the security finally matures.

[23] Maturity is measured relative to the type of security. For Fixed Income Securities (exclusive of asset-backed securities and mortgage-backed securities), maturity shall be calculated using dollar-weighted average maturity, which is calculated by taking the average length of time to maturity. For asset-backed securities and mortgage-backed securities, maturity shall be calculated using weighted average life, which is the estimated time to principal paydown for each underlying instrument held by the Fund, weighted according to the relative holdings per instrument.

[24] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[25] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[26] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[27] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m., Eastern time (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* the Registration Statement.

business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day.

Net Asset Value

The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., Eastern time) on each day the New York Stock Exchange is open for business. NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Board of Trustees of the Trust (''Trust Board'') or its delegate.

The Fund's investments will be valued daily at market value or, in the absence of market value with respect to any investment, at fair value, in each case in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the ''Valuation Procedures'') and in accordance with the 1940 Act. A market valuation generally means a valuation (i) obtained from an exchange, an independent pricing service (''Pricing Service''), or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a Pricing Service, or a major market maker (or dealer). The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

Certain securities in which the Fund may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the fair value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities. Typically, debt securities (other than those described below) will be valued using information provided by a Pricing Service. Debt securities having a remaining maturity of 60 days or less when purchased will be valued at cost adjusted for amortization of premiums and accretion of discounts. Overnight repurchase agreements will be valued at cost and term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Asset-backed and mortgage-backed securities will generally be valued by using a Pricing Service. If a Pricing Service does not cover a particular asset-backed or mortgage-backed security, or discontinues covering a particular asset-backed or mortgage-backed security, the security will be priced using broker quotes generally provided by brokers that make or participate in markets in the security.[28] To derive values, Pricing Services and broker-dealers may use matrix pricing and valuation models, as well as recent market transactions for the same or similar assets. Occasionally, the Adviser's pricing committee (the ''Pricing Committee'') may determine that a Pricing Service price does not represent an accurate value of an asset-backed or mortgage-backed security, based on the broker quotes it receives, a recent trade in the security by the Fund, information from a portfolio manager, or other market information. In the event that the Pricing Committee determines that the Pricing Service price is unreliable or inaccurate based on such other information, the broker quotes may be used. Additionally, if the Pricing Committee determines that the price of an asset-backed or mortgage-backed security obtained from a Pricing Service and the available broker quotes are unreliable or inaccurate due to market conditions or other reasons, or if a Pricing Service price or broker quote is unavailable, the security will be valued using fair value pricing, as described below.

Equity securities listed on any exchange other than the Exchange will be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. Equity securities listed on the Exchange will be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange, the securities will be valued using fair value pricing, as described below. Equity securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities.

Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Trust Board or its delegate at fair value. The use of fair value pricing by the Fund will be governed by the Valuation Procedures and conducted in accordance with the provisions of the 1940 Act. Valuing the Fund's securities using fair value pricing will result in using prices for those securities that may differ from current market valuations or official closing prices on the applicable exchange.

Availability of Information

The Fund's Web site (*www.ftportfolios.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares' ticker, Cusip and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[29] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [30] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio

[28] *See* Amendment No. 1, *supra* note 3.

[29] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[30] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern time).

of securities, and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[31] The Disclosed Portfolio will include, as applicable, the names, quantities, percentage weightings and market values of the portfolio securities, and other assets held by the Fund. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[32] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a ''real time'' update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association (''CTA'') plans for the Shares. Intraday executable price quotations on Fixed Income Securities and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for certain Fixed Income Securities held by the Fund, including mortgage-backed securities and asset-backed securities. For exchange-traded assets, intraday pricing information will be available directly from the applicable listing exchange.

[sic] and, for exchange-traded assets, such intraday information will be available directly from the applicable listing exchange. Intraday price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change will be defined in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3[33] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal

[31] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[32] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[33] *See* 17 CFR 240.10A–3.

securities laws.[34] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities held by the Fund with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG'') [35] and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Fixed Income Securities held by the Fund reported to FINRA's TRACE.

All of the Fund's net assets that are invested in exchange-traded equity securities will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

The Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer, and is required to implement a ''fire wall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities held by the Fund with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Fixed Income Securities held by the Fund reported to FINRA's TRACE. All of the Fund's net assets that are invested in exchange-traded equity securities will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The investment objective of the Fund will be to seek current income, consistent with preservation of capital and daily liquidity. Under normal market conditions, the Fund will seek to achieve its investment objective by investing in a portfolio of U.S. dollar-denominated Fixed Income Securities. At least 80% of the Fund's net assets will be invested in Fixed Income Securities that are, at the time of purchase, investment grade. The Fund intends to limit its investments in asset-backed securities and non-agency mortgage-backed securities (in the aggregate) to 20% of its net assets and does not intend to invest in derivatives. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A

[34] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[35] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Intraday executable price quotations on Fixed Income Securities and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. Additionally, FINRA's TRACE will be a source of price information for certain Fixed Income Securities held by the Fund, including mortgage-backed securities and asset-backed securities. For exchange-traded assets, intraday pricing information will be available directly from the applicable listing exchange.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The Fund's investments will be valued daily at market value or, in the absence of market value with respect to any investment, at fair value, in each case in accordance with the Valuation Procedures and the 1940 Act.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities held by the Fund with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the exchange-traded securities held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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 Exchange consents, the Commission shall: (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–NASDAQ–2014–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–041. 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 printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–041, and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09926 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72026; File No. SR–NYSE–2014–08]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Adopt the Bond Trading License and the Bond Liquidity Provider Programs Pursuant to NYSE Rules 87 and 88

April 25, 2014.

I. Introduction

On February 27, 2014, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would provide for a bond trading license (''BTL'') for member organizations that desire to trade only debt securities on the Exchange and that would establish a new class of market participants called bond liquidity providers (''BLPs''). The proposal was published for comment in the **Federal Register** on March 14, 2014.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.[4]

II. Description of the Proposal

A. Bond Trading License

The Exchange proposes to establish a trading license for its member organizations to trade only debt securities on the Exchange. Generally, to effect any transaction on the Exchange, a member organization must obtain a trading license pursuant to NYSE Rule 300. Under proposed NYSE Rule 87, the Exchange may issue a BTL to any approved member organization to effectuate bond transactions on the Exchange. The BTL would not be transferrable and could not be assigned, sublicensed, or leased.[5]

B. Bonds Liquidity Providers

Proposed NYSE Rule 88 would provide for a class of market participants called BLPs. The Exchange would provide BLPs with incentives, in the form of rebates, for quoting and for providing liquidity with respect to bonds to which they have been assigned.

1. Qualifications

To qualify as a BLP, an Exchange member organization would have to demonstrate an ability to meet the quoting requirement described below. In addition, an Exchange member organization would need to have mnemonics that identify to the Exchange BLP trading activity in assigned BLP bonds. Finally, an Exchange member organization would need to have adequate trading infrastructure and technology to support electronic trading.

2. Application Process

To become a BLP, an Exchange member organization would be required to submit an application form with supporting documentation to the Exchange. The Exchange would review the application and determine whether the applicant was qualified to be a BLP. In the event an applicant were disapproved or disqualified as a BLP, the applicant could request an appeal or reapply three months after the month in which the applicant received the disapproval or disqualification notice from the Exchange.

3. Matching of BLPs and Issuers

Only one BLP would be assigned with respect to the bonds of a single issuer. Prior to the commencement of the program, the Exchange would match issuers with approved BLPs. For issuers that have at least one debt issue with current outstanding principal of at least $500 million, each BLP would select the issuers it will represent in the program, with the order of selection among BLPs determined by lottery. For issuers that do not have any debt issue with current outstanding principal of at least $500 million, each BLP would submit a list of issuers and bonds it would be willing to represent. The BLP that is willing to represent the most bonds for a given issuer would be matched to that issuer. In the event of a tie, the BLP with the highest lottery number from the first round of matching would be matched with the issuer.

After the commencement of the program, on a monthly basis, BLPs would be able to apply for unrepresented issuers. The BLP willing to represent the most debt issuances of any given unrepresented issuer would be awarded status as a BLP for that issuer, with ties resolved by lottery.

A BLP would be required, with respect to an assigned issuer, to represent each debt issuance of that issuer that has an outstanding principal of $500 million or more. A BLP could, but would not be required to, represent any debt issuance with a smaller outstanding principal amount. If a BLP were representing a debt issuance that was above $500 million but fell below that level, or if a BLP had been voluntarily representing an issuance below the $500 million level where the outstanding principal amount had since been reduced, the BLP would be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Securities Exchange Act Release No. 71671 (March 10, 2014), 79 FR 14558 (March 14, 2014).

[4] The Commission notes that it previously approved the proposed BTL and BLP program on a pilot basis. *See* Securities Exchange Act Release No. 63736 (January 9, 2011), 76 FR 4959 (January 28, 2011) (SR–NYSE–2010–74). The pilot program was originally scheduled to expire on January 19, 2012, but the Commission approved two one-year extensions. *See* Securities Exchange Act Release No. 65995 (December 16, 2011), 76 FR 79726 (December 22, 2011) (SR–NYSE–2011–63); Securities Exchange Act Release No. 68533 (December 21, 2012), 77 FR 77166 (December 31, 2012) (SR–NYSE–2011–63). The pilot program terminated on January 19, 2014.

[5] The holder of the BTL may, with the Exchange's prior written consent, transfer the BTL to a qualified and approved member organization that is an affiliate or that continues substantially the same business of the BTL holder. *See* proposed NYSE Rule 87.

permitted to cease representing that debt issuance by notifying the Exchange in writing by the 15th day of the month, in which case the BLP could cease representing the issuance on the first day of the following month.

4. Appeal of Disapproval or Disqualification

An Exchange member organization would be able to dispute the Exchange's decision to disapprove an application or to disqualify a member from BLP status by requesting, within five business days of receiving notice of the decision, review by the Bond Liquidity Provider Panel (''BLP Panel''). The BLP Panel would be composed of the Exchange's Chief Regulatory Officer (or a designee) and two officers of the Exchange designated by the Co-Head of U.S. Listings and Cash Execution. In the event an Exchange member organization were disqualified from its status as a BLP, the Exchange would not reassign the appellant's bonds to a different BLP until the BLP Panel had informed the appellant of its ruling. The BLP Panel would review the facts and render a decision within the time frame prescribed by the Exchange, and all determinations by the BLP Panel would constitute final action by the Exchange.

5. Voluntary Withdrawal of BLP Status

A BLP would be able to withdraw its status as a BLP by giving notice to the Exchange. After the Exchange received the notice of withdrawal, the Exchange would reassign bonds assigned to the withdrawing BLP as soon as practicable, but no later than 30 days from the date the notice was received by the Exchange. Withdrawal would become effective when bonds assigned to the withdrawing BLP were reassigned to another BLP. If the reassignment of bonds took longer than the 30-day period, the withdrawing BLP would have no further obligations and would not be responsible for any matters concerning its previously assigned BLP bonds.

6. Quoting Requirement

A BLP would be required to maintain: (1) A bid at least 70% of the trading day for each assigned bond; (2) an offer at least 70% of the trading day for each assigned bond; and (3) a bid or offer at the Exchange's Best Bid (''BB'') or Exchange's Best Offer (''BO'') at least 5% of the trading day in each of its bonds in the aggregate. A BLP that met these quoting requirements would receive a liquidity provider rebate, to be set forth in the Exchange's Price List.

7. Calculation of Quoting Requirement

On a daily and monthly basis, the Exchange would calculate whether a BLP met its 70% quoting requirement by determining the average percentage of time a BLP posted bids and offers in each of its BLP bonds during the regular trading day.[6] The 5% quoting requirement would take effect starting the third month of a BLP's participation. On a daily and monthly basis, the Exchange would determine whether a BLP had met its 5% quoting requirement by determining the average percentage of time a BLP was at the BB or BO in each of its assigned BLP bonds during the regular trading day.[7]

8. Failure To Meet Quoting Requirements

After an initial two-month grace period, if, in any given calendar month, a BLP failed to meet any of the quoting requirements for an assigned bond, the BLP would not receive the rebate for transactions in that bond for that month. If a BLP's failure to meet the quoting requirements continued for three consecutive calendar months in any assigned BLP bond, the Exchange could, in its discretion, take one or more of the following actions: (i) Revoke the assignment of all of the affected issuer's bonds from the BLP; (ii) revoke the assignment of an additional unaffected issuer from the BLP; or (iii) disqualify a member organization from its status as a BLP.

The Exchange would determine if and when a member organization would be disqualified from its status as a BLP. One calendar month prior to any such determination, the Exchange would notify a BLP of its impending disqualification in writing. When disqualification determinations were made, the Exchange would provide a disqualification notice to the member organization.

If a member organization were denied approval or disqualified from its status as a BLP, that member organization could re-apply for BLP status three calendar months after the month in which the member organization received its disapproval or disqualification notice.

III. Discussion and Findings

After carefully reviewing the proposal, the Commission finds that the proposed rule change to create a BTL for member organizations and to establish BLPs as a class of NYSE market participants is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that the proposed BTL would allow a member organization that wishes to trade only debt securities to become authorized to trade on the Exchange pursuant to a license more specifically tailored to that member organization's trading. The Commission believes that this aspect of the proposal could increase efficiency, without compromising regulatory oversight, for member organization applicants and the Exchange. The Commission also notes that the proposed BLPs would be required to have adequate trading infrastructure and technology to support trading in the debt securities and to meet quoting requirements. Furthermore, BLPs would have to be approved by the Exchange and, upon meeting quoting requirements and providing liquidity to NYSE's bond market, would receive a rebate based on an incentive and quoting structure.[10] BLPs that fail to meet the quoting requirements set forth in the proposed rule would no longer be eligible for the rebate and could, in the Exchange's discretion, be disqualified as a BLP or have one or more issues revoked. The Commission believes that it is consistent with the requirements of the Act for the Exchange to provide an incentive to member organizations to provide liquidity to the bond marketplace and to remove the incentive if a BLP does not meet its obligations.

As proposed, only one BLP could represent the bonds of a given issuer. With respect to issuers having at least one issue with an outstanding principal of at least $500 million, BLPs would, in an order determined by lottery, select the issuers they would represent. Issuers

[6] *See* proposed NYSE Rule 88(f)(1).

[7] *See* proposed NYSE Rule 88(f)(2).

[8] In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] The Exchange has not submitted a filing to set forth the rebate with respect to the proposed program.

not having at least one issue with an outstanding principal of at least $500 million would be matched to BLPs willing to represent the most bonds for that given issuer, and any tie with respect to BLPs wishing to represent these issuers would be resolved by allowing BLPs to choose in the order determined by lottery. The Commission believes that the proposed allocation of issuers to BLPs is an objective way to initiate the BLP.

NYSE would allow BLPs and BLP applicants the opportunity to appeal disapproval or disqualification decisions, as applicable, to a BLP panel, and NYSE would provide a disqualified BLP with a month's prior written notice of the disqualification. The Commission believes that this should provide transparency to the process and an additional opportunity for BLPs and BLP applicants to be heard by the Exchange.

The Commission notes that debt securities typically trade in a decentralized over-the-counter dealer market that is less liquid and transparent than the equities markets. The proposal to reward market participants for actively quoting and providing liquidity could enhance market quality for bonds traded on the Exchange.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2014–08), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09922 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72029; File No. SR–NSCC–2014–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Enhance the System That Processes Corporate Actions Within NSCC's Continuous Net Settlement System

April 25, 2014.

I. Introduction

On March 6, 2014, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2014–03 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on March 21, 2014.[3] The Commission did not receive comments on the Proposed Rule Change. This Order approves the Proposed Rule Change.

II. Description

With this Proposed Rule Change, NSCC will amend its Rules and Procedures (''Rules'') [4] to enhance the system that processes corporate actions within NSCC's Continuous Net Settlement (''CNS'') system. NSCC plans to implement the enhancements contained the Proposed Rule Change in multiple phases during 2014, which NSCC will announce by Important Notice.

One of NSCC's core services as a central counterparty is to clear and settle trades through CNS. In CNS, compared and recorded transactions in CNS-eligible securities [5] that are scheduled to settle on a common settlement date are netted by issue into one net long (i.e., buy) or net short (i.e., sell) position. CNS then nets those positions further with positions of the same issue that remain open after their originally scheduled settlement date (''Fail Positions''). The result is a single deliver or receive obligation for each NSCC member (''Member'') for each issue in which the Member has activity on a given day.

As part of the services offered to Members, certain corporate actions, including cash dividends, stock dividends, bond interest, and other mandatory corporate actions (which include redemptions, stock and cash mergers, and name changes) are automatically debited or credited to Members' CNS accounts with open Fail Positions in CNS. Members are also permitted to take part in certain voluntary corporate actions, which include tender or exchange offers, with respect to open Fail Positions in CNS.

Upon implementation of the Proposed Rule Change, NSCC will make enhancements to its processing of corporate actions within the CNS system, as described below.

A. Optional Dividends

When a Fail Position in CNS is subject to a dividend payment, the issuer specifies the form in which that dividend will be paid (e.g., securities or cash) (''Default Option''). NSCC Members that have failed to receive securities from CNS (''Long Members'') may elect a form of payment that differs from the Default Option by submitting an instruction to NSCC no later than a pre-set date and cut-off time. NSCC currently sets a cut-off time for the submission of such election instructions based on the cut-off time set by DTC. Under the Proposed Rule Change, NSCC will set the date and cut-off time that is earlier than the DTC cut-off time in order to provide Members that have failed to deliver securities to CNS (''Short Members'') with additional time to communicate elections to their customers. Additionally, such elections are currently submitted to NSCC manually; however, upon implementation of the Proposed Rule Change, the elections will be submitted to NSCC electronically.

B. Support ''Offer to Consent'' Tender/Exchange Offers

Today, if an open Fail Position in CNS is subject to a tender or exchange offer that includes an ''offer to consent,'' in order to participate in that tender or exchange offer the Fail Position would be closed, exited out of CNS, and would then settle directly between the counterparties outside of CNS. With this Proposed Rule Change, Members with open Fail Positions in CNS will be able to participate in tender or exchange offers that include an ''offer to consent'' within CNS.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Release No. 34–71725 (Mar. 14, 2014), 79 FR 15780 (Mar. 21, 2014) (SR–NSCC–2014–03).

[4] Defined terms not defined herein have the mean set forth in the Rules.

[5] To be CNS-eligible, a security must be eligible for book-entry transfer on the books of The Depository Trust Company (''DTC''), an NSCC affiliate, and must be capable of being processed in the CNS system. For example, securities may be ineligible for CNS processing due to certain transfer restrictions (e.g., 144A securities) or due to the pendency of certain corporate actions.

C. Protect Submission and Liability Notification

Currently, the cut-off time for a Long Member to place a ''protect'' on an open Fail Position in CNS in order to participate in an upcoming corporate action or to add shares to a voluntary corporate action is either (i) on the business day prior to the ''protect'' expiration date, or (ii) on the business day prior to the expiration date of the corporate action if there is no ''protect'' for that corporate action. Failure to meet those deadlines often results in Long Members incurring additional costs. As such, NSCC staff, in its discretion and on a best efforts basis, has accepted and processed such ''protect'' instructions either on the ''protect'' expiration date or on the expiration date of the corporate action.

Upon implementation of the Proposed Rule Change, for a fee of $500,[6] Members will be permitted to place a ''protect'' on an open fail position in CNS in order to participate in an upcoming corporate action or to add shares to a voluntary corporate action either (i) on the ''protect'' expiration date, or (ii) on the expiration date of the corporate action if there is no ''protect'' for that corporate action. Additionally, with this Proposed Rule Change, Members will submit ''protect'' instructions to NSCC electronically.

D. Final Liability and Final Protection Notification

Today, CNS alerts Short Members of their final assigned liability with respect to voluntary corporate actions either (i) on the business day after the ''protect'' expiration date for that corporate action, or (ii) on the business day after the expiration date of the corporate action if there is no ''protect'' for that corporate action.

Upon implementation of the Proposed Rule Change, CNS will alert a Short Member of its assigned final liability no later than the close of business on the same business day the final liability is assigned to that Member by CNS. The Proposed Rule Change will also clarify that Long Members will be notified that their Fail Positions in CNS will be subject to the ''protection'' for that corporate action no later than the close of business on the same business day the final ''protection'' is assigned to that Member by CNS.

E. SMART/Track for CNS Corporate Actions

With this Proposed Rule Change, Members will submit instructions to participate in a voluntary reorganization and access all corporate action processing output data through SMART/Track for CNS Corporate Actions, which is available within NSCC's SMART/Track for Corporate Action Liability Notification Service. The output data, which is currently delivered to Members through files and reports, will be visible through on-line screens and include search options and filters.

F. Restriction on Movement of Positions Between CNS Sub-Accounts

Under the Proposed Rule Change, when a voluntary reorganization is being processed on a security, CNS will no longer permit the movement of positions in that security between non-reorganization sub-accounts (e.g., the CNS General Account and the CNS Fully-Paid-For Account) either (i) on the ''protect'' expiration date, or (ii) on the expiration date of the voluntary reorganization if there is no ''protect'' for that voluntary reorganization.

G. Additional Rule Changes

In addition to the enhancements described above, with this Proposed Rule Change NSCC will amend its Rules to clarify that the Rules are drafted assuming the processing of subject securities with a ''protect'' period of three days. Similarly, the table that is currently included in the Rules regarding this topic will be updated to further illustrate the timeframes for processing of subject securities with a ''protect'' period of two days or less.

III. Discussion and Commission Finding

Section 19(b)(2)(C) of the Act[7] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to, among other things, ''promote the prompt and accurate clearance and settlement of securities transactions and . . . to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.''[9] Here, the Commission finds the enhancements to be implemented by the Proposed Rule Change consistent with those requirements because each change discussed above should result in greater efficiency and automation with respect to the processing of corporate actions within CNS, thus promoting the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NSCC–2014–03 be, and it hereby is, *approved.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09925 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

[6] The Commission understands that NSCC will propose this fee in a separate rule filing with the Commission.

[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72027; File No. SR–Phlx–2014–25]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 1064 and 1080

April 25, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2014, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 1064 and 1080 to more

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

specifically address the number and size of contra-parties to a Qualified Contingent Cross Order (''QCC Order'').

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 1064. Crossing, Facilitation and Solicited Orders

(a)–(d) No change.

(e) A Floor Qualified Contingent Cross Order is comprised of an *originating* order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order *or orders totaling* [to buy or sell] an equal number of contracts.

(1)–(3) No change.

Commentary

.01–.04 No change.

* * * * *

Rule 1080. Phlx XL and Phlx XL II

(a)–(n) No change.

(o) Qualified Contingent Cross Order.

A Qualified Contingent Cross Order is comprised of an *originating* order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options, that is identified as being part of a qualified contingent trade, as that term is defined in subsection (3) below, coupled with a contra-side order *or orders totaling* [to buy or sell] an equal number of contracts.

(1)–(3) No change.

* * * * *

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 proposal is to expand the availability of QCC orders by permitting multiple contra-parties on a QCC order. Under the proposal, multiple contra-parties would be allowed on one side (the contra-side), so long as they total the originating QCC Order, which would be a single order from a single party for at least 1,000 contracts (in addition to meeting the other requirements of a QCC Order).

The Exchange currently permits two types of QCC Orders. Pursuant to Rule 1064(e), A Floor Qualified Contingent Cross Order (''Floor QCC Order'') is comprised of an order to buy or sell at least 1,000 contracts [3] that is identified as being part of a qualified contingent trade,[4] coupled with a contra-side order to buy or sell an equal number of contracts. Floor QCC Orders are immediately executed upon entry into the System by an Options Floor Broker provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the National Best Bid/Offer (''NBBO''). Floor QCC Orders are submitted into the System by Floor Brokers on the Floor via the Floor Broker Management System. Floor QCC Orders are automatically rejected if they cannot be executed.

In addition to Floor QCC Orders, Phlx offers automated Qualified Contingent Cross Orders (''Automated QCC Order''). Pursuant to Rule 1080(o), an Automated QCC Order is very similar to a Floor QCC Order, in that it must be comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, coupled with a contra-side order to buy or sell an equal number of contracts. Automated QCC Orders shall only be submitted electronically from off the Floor to the Phlx System. Automated QCC Orders are immediately executed upon entry into the System by an Order Entry Firm provided that (i) no Customer Orders are at the same price on the Exchange's limit order book and (ii) the price is at or between the NBBO. Automated QCC Orders will be automatically rejected if they cannot be executed.

Each definition of a QCC Order is currently framed in the singular (* * * coupled with *a* contra-side order * * *), therefore, the Exchange would like to amend its rule to permit its members and other participants to submit a QCC Order consisting of a single order from a single party for at least 1,000 contracts on the originating or agency side and a single order or multiple orders on the opposite, contra-side (generally known as the solicited side). Multiple contra-parties are only permitted on one side, the contra-side, and are not permitted on the originating side. Currently, the contra-side to a QCC Order is entered into the Phlx system as a single order, even if that order consists of multiple contra-parties who are allocated their portion in a post-trade allocation. Therefore, the Exchange now proposes to modify its rules to provide that a QCC Order must involve a single order for a single party for at least 1,000 contracts on the originating side, but that it may consist of a single or multiple orders on the opposite, contra-side, so long as it totals the number of contracts on the originating side.

Furthermore, the Exchange proposes to permit single or multiple contra-side orders on a QCC Order with a total number of contracts equaling the originating order size without any size restriction for such contra-side orders. The Exchange believes that permitting multiple contra-parties to QCC Orders that total the number of contracts on the originating side may increase liquidity and, potentially, improve the prices at which QCC Orders get executed. The ability for market participants to provide liquidity in response to large sized orders is directly proportional to the size and associated risk of the resulting position. As a result, smaller sized trades are often done at a better price than larger sized trades, which convey more risk. The ability to pool together multiple market participants to participate on the contra-side of a trade for any size has a direct and positive impact on the ability of those market participants to provide the best price as they compete to participate in the order without being compelled to provide liquidity with a large minimum quantity. This concept is not unique to large crosses. It is well understood and observed that any product with multiple market participants providing liquidity offers the tightest and most liquid market and the same applies to the larger orders negotiated away from the exchanges.

For instance, a 5,000 contract originating QCC Order to buy could,

[3] In the case of Mini Options, the minimum size is 10,000 contracts.

[4] A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

under this proposal, be coupled with two orders to sell 2,500 contracts each. Similarly, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with two contra-side orders to sell, one for 4,500 contracts and one for 500 contracts. In the above examples, the total of all sell (contra-side) orders equals the size of the originating order and the originating order is for at least 1,000 contracts.

An area of concern has been the protection of smaller orders, which is why the QCC Order is limited to the 1,000 contract minimum. It is important to note that the concern has always been and should continue to be for the originating order or unsolicited part of the order that is seeking liquidity and not the professional responders and providers of liquidity. Allowing smaller orders to participate on the other side (*i.e.,* contra-side) of QCC Orders not only provides the best price and opportunity for a trade to occur in a tight and liquid market, but ensures that the highest possible number of liquidity providers are able to participate. Accordingly, the proposal would benefit both sides of a QCC trade by ensuring a trade at the best possible price without favoring larger participants on the solicited side of the trade.

Under this proposal, the QCC Order must continue to satisfy all other requirements of a QCC Order under the Exchange's rules.

The Exchange will track and monitor QCC Orders to determine which is the originating/agency side of the order and which is the contra-side(s) of the order to ensure that Members are complying with the minimum 1,000 contract size limitation on the originating/agency side of the QCC Order. The Exchange will check to see if Members are aggregating multiple orders to meet the 1,000 contract minimum on the originating/agency side of the trade in violation of the requirements of the rule. The rule requires that the originating/agency side of the trade consist of one party who is submitting a QCC Order for at least 1,000 contracts. The Exchange represents that it will enforce compliance with this portion of the rule by checking to see if a Member breaks up the originating/agency side of the order in a post trade allocation to different clearing firms, allocating less than 1,000 contracts to a party or multiple parties. For example, a Member enters a QCC Order into the system for 1,500 contracts and receives an execution. Subsequent to the execution, the Member allocates the originating/agency side of the order to two different clearing firms on a post trade allocation basis, thereby allocating 500 contracts to one clearing firm and 1,000 contracts to another clearing firm. This type of transaction would not meet the requirements of a QCC Order under the current and proposed rule.

With regard to order entry, a Member will have to mark the originating/agency side as the first order in the system and the contra-side(s) as the second. The Exchange will monitor order entries to ensure that Members are properly entering QCC Orders into the system.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] 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 amending the rule text to expand a QCC Order. Specifically, because the proposal states that multiple parties are permitted on the contra-side, it should provide members and participants with certainty as to what is allowed and, therefore, provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order. Furthermore, because the proposal permits a single or multiple contra-parties without any contract size requirement so long as they total the originating size, it should also increase liquidity and improve the prices at which QCC Orders get executed and, therefore, provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order.

In approving QCC Orders, the Commission has stated that ''. . . qualified contingent trades are of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process.'' [7] The Commission ''also has recognized that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options* [emphasis added].'' [8] In light of these benefits, the Exchange believes that the proposal should improve the usefulness of the QCC Order without raising novel regulatory issues, because the proposal does not impact the fundamental aspects of this order type—it merely permits multiple contra-parties, regardless of size, on the contra-side, while preserving the 1,000 contract minimum on the originating order.

Consistent with Section 6(b)(8) of the Act, the Exchange seeks to compete with other options exchanges for QCC Orders involving multiple parties, including where there are multiple contra-parties. The Exchange believes that this will be beneficial to participants because allowing single or multiple contra-parties of any size on the contra-side should foster competition for filling the contra-side of a QCC Order and thereby result in potentially better prices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In fact, the proposal is intended to relieve a burden on competition, which results from different exchanges interpreting their rules differently. Among the options exchanges, the Exchange believes that the proposal to allow, on the contra-side, a single or multiple contra-parties without any contract size restriction so long as they total the originating size should foster competition for filling the contra-side of a QCC order and thereby result in potentially better prices for such orders.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] QCC Approval Order [sic] at text accompanying footnote 115.

[8] QCC Approval Order [sic] at Section III.A. citing Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Original QCT Exemption).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.196–4(f)(6).

Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will help eliminate investor confusion and promote competition among the option exchanges.[14] Therefore, the Commission designates the proposed rule change to be operative upon filing.

The Commission notes that, given the differing requirements as between the originating side and contra-side for QCC Orders, it is essential that the Exchange be able to clearly identify and monitor—throughout the life of a QCC Order, beginning at time of order entry on the Exchange through the post-trade allocation process—each side of the QCC Order and ensure that the requirements of the order type are being satisfied including, importantly, those relating to the originating side. The Commission believes this to be critical so that the Exchange can ensure that market participants are not able to circumvent the requirements of the QCC Order (as amended by this proposed rule change), each of which the Commission continues to believe are critical to ensuring that the QCC Order is narrowly drawn.[15] Further, the Commission notes that the Exchange has made certain representations regarding its enforcement and surveillance of its Members' use of QCC Orders, including, for example, not only at the time of order entry, but through the post-trade allocation process as well.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–2014–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–25, and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09923 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] The Commission expects the Exchange to have the capability to enable it to surveil that such requirements are being met. Though the Exchange has stated its ability to do so, if the Exchange is not able to have such monitoring at any point in time, the Commission would expect the Exchange to take other steps to ensure that the QCC Order cannot be improperly used. For example, if the Exchange were not able to identify and monitor which side of a QCC Order is the originating order, the Commission would expect that it would require that both sides of the QCC Order meet the more stringent requirements of the originating side, *i.e.,* that it be for a single order for at least 1,000 contracts.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72025; File No. SR–NYSEMKT–2014–17]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Adopting Rule 971.1NY for an Electronic Price Improvement Auction for Single-Leg Options Orders

April 25, 2014.

I. Introduction

On February 21, 2014, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 971.1NY (''Rule 971.1NY'' or ''Rule'') to provide for an electronic crossing mechanism with a price improvement auction for options trading on the Exchange, to be referred to as the Customer Best Execution Auction (''CUBE Auction'' or ''Auction''). The proposal also would make related changes to certain Exchange rules to accommodate the new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CUBE Auction. The proposed rule change was published for comment in the **Federal Register** on March 11, 2014.[3] The Commission received no comments regarding the proposal. On April 21, 2014, the Exchange filed Amendment No. 1 to the proposed rule change. On April 23, 2014, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change.[4] This order approves the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

Proposed Rule 971.1NY would provide for an electronic price improvement auction for single leg options orders. The CUBE Auction would be available to Amex Trading Permit Holders (''ATP Holders'') both on and off the trading floor of the Exchange, subject to the requirements of Section 11(a) of the Act (discussed below).[5] In the Notice, the Exchange stated that the CUBE Auction would operate in a manner consistent with—but not identical to—the operation of electronic price improvement auctions available on other options markets.[6] The Exchange stated that the CUBE Auction is designed to work seamlessly with the Exchange's Consolidated Book, which is the Exchange's single electronic order book where all quotes and limit orders sent to the Exchange are placed and reside as a file on the NYSE Amex System (''System'').[7]

Under proposed Rule 971.1NY(a), an ATP Holder would be able to seek to guarantee the execution of a limit order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (''CUBE Order'') through the CUBE Auction. The ATP Holder that submits the CUBE Order (''Initiating Participant'') would agree to guarantee the execution of the CUBE Order at a specified price (''single stop price'') by submitting a contra-side order (''Contra Order'') representing principal interest or interest that it has solicited to trade with the CUBE Order. In lieu of a specifying a stop price, the Initiating Participant could utilize the auto-match or auto-match limit features of Rule 971.1NY(c)(1) (discussed below). The Initiating Participant's manner of guaranteeing the CUBE Order and the price(s)[8] at which the CUBE Order is stopped would not be displayed. The Exchange stated that, although the Contra Order would guarantee the CUBE Order an execution, the purpose of the CUBE Auction is to provide the opportunity for price improvement for the CUBE Order, as well as the opportunity for other market participants to interact with the CUBE Order.[9]

A. Initiating Price

As set forth in Rule 971.1NY(a), an Auction begins with an initiating price, which would be announced to all ATP Holders who subscribe to receive the Request for Response (''RFR'') messages that are sent by the Exchange over ArcaBook[10] upon receipt of a CUBE Order.[11] In addition to the initiating price, the RFR would identify the series, side of market, and size of the CUBE Order.[12] For a CUBE Order to buy (sell), the initiating price would be the lower (higher) of the CUBE Order's limit price or the National Best Offer (''NBO'') (National Best Bid) (''NBB''),[13] except as provided for in proposed paragraph (b)(1)(B) of the Rule (discussed below).[14] The initiating price of the CUBE Order, as well as the Contra Order and any responsive GTX Orders (discussed below) could be priced in one cent increments, regardless of the Minimum Price Variation (''MPV'') applicable to the series.[15]

B. Permissible Range of Executions

At the conclusion of the CUBE Auction, the CUBE Order would be executed at a price or prices within a permissible range of executions, as specified in proposed Rule 971.1NY(b)(1).[16] A CUBE Order to buy (sell) generally would have a permissible range of executions with an upper (lower) bound equal to the initiating price and the lower (upper) bound equal to the NBB (NBO). However, pursuant to proposed paragraphs (b)(1)(A) and (b)(1)(B) of the Rule, tighter ranges of executions would apply when there is Customer interest[17] in the BBO for orders of 50 contracts or more or for when there are orders for fewer than 50 contracts,[18] as follows:

If the CUBE Order to buy (sell) is for 50 contracts or more and there is Customer interest in the Consolidated Book at the Exchange Best Bid (''BB'') (Exchange Best Offer (''BO'')), the lower

[3] *See* Securities Exchange Act Release No. 71655 (March 5, 2014), 79 FR 13711 (''Notice'').

[4] The Exchange withdrew Amendment No. 1 due to a technical error in the amendment. In Amendment No. 2, the Exchange clarified that Exchange-sponsored Floor Broker systems are not enabled to accept orders into the CUBE Auction mechanism from Floor Brokers; (2) revised the rule text to clarify that unrelated quotes and orders will never trade through their limit prices; and (3) revised the rule text to clarify that the Contra Order may not be cancelled or modified. Amendment No. 2 has been placed in the public comment file for SR–NYSEMKT–2014–17 at *http://www.sec.gov/comments/sr-nysemkt-2014-17/nysemkt201417.shtml* (*see* letter from Janet McGinness, EVP, Legal, NYSE MKT, to Secretary, Commission, dated April 23, 2014) and also is available on the Exchange's Web site at *http://www.nyse.com/nysenotices/nyseamex/rule-filings/pdf.action;jsessionid=0C79EAD580B05432B779CC2C14D4CDC2?file_no=SR-NYSEMKT-2014-17&seqnum=3*.

[5] *See* Notice, 79 FR at 13711. *See also* Amendment No. 2, *supra* note 4. In addition to utilizing the CUBE Auction, floor-based ATP Holders would be permitted to continue to use existing floor-based crossing rules. *See* Notice, 79 FR at 13711.

[6] *See* Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.74A—Automated Improvement Mechanism (''AIM''); NASDAQ OMX PHLX, INC. (''PHLX'') Rule 1080(n)—Price Improvement XL (''PIXL''); BOX Options Exchange LLC (''BOX'') Rule 7150—Price Improvement Period (''PIP''); International Securities Exchange (''ISE'') Rule 723—Price Improvement Mechanism (''PIM''). NYSE MKT noted that the AIM, PIXL, PIP and PIM have features similar to the CUBE Auction including: (a) Providing the opportunity for price improvement; (b) delineating an exposure period for the original agency order; (c) setting guidelines for the types of orders eligible for participation; and (d) setting allocation rules for orders considered by the mechanism. *See* Notice, 79 FR at 13711, n.4.

[7] *See* Notice, 79 FR at 13711–12.

[8] When the Initiating Participant utilizes the auto-match or auto-match limit features, there would be no single price at which the CUBE Order is stopped.

[9] *See* Notice, 79 FR at 13712. The proposal also would amend Rule 900.2NY(18A) to provide that, for purposes of the CUBE Auction, Professional Customers as defined in that rule would be treated as broker-dealers. The Exchange stated that its proposed treatment of Professional Customers as broker-dealers for purposes of the CUBE Auction is consistent with the rules of the CBOE. *See* CBOE Rule 1.1(ggg). Further, the proposal would make a technical, non-substantive amendment to Rule 900.2NY(18A) that is unrelated to the CUBE Auction proposal and also would add a new provision to Rule 935.NY to provide an exception from the order exposure requirement if the CUBE Auction is utilized.

[10] ArcaBook is a proprietary data feed offered by the Exchange and is available to anyone (including all ATP Holders) by subscription. The Exchange represents that RFRs for CUBE Auctions would be included in the options data feed at no incremental cost to the ArcaBook subscriber. Thus, any subscriber that opts to receive the options data, including any ATP Holder subscriber, would have the ability to enter an order in response to those RFRs (*i.e.,* the election to receive RFRs would not be on a case-by-case basis).

[11] *See* proposed Rule 971.1NY(c)(2), discussed further below.

[12] *See id.*

[13] *See* proposed Rule 971.1NY(a).

[14] *See* proposed Rule 971.1NY(b)(1). *See also* Notice, 79 FR at 13712 for examples illustrating the initiating price.

[15] *See* proposed Rule 971.1NY(b)(7). *See also* Notice, 79 FR at 13712 for an example illustrating the pricing increments and *see infra* notes 62–63 and accompanying text regarding unrelated orders arriving on the Exchange on the opposite side of the CUBE Order, which would be permitted to participate in an Auction but only if submitted in the MPV for the series.

[16] *See infra* Section III.0. for a discussion of the application of exceptions to Rule 991.NY (the Exchange's Trade Through rule) in the context of a CUBE Auction.

[17] For purposes of the proposed Rule, the term ''customer'' (when capitalized) means an individual or organization that is not a broker-dealer, as set forth in Rule 900.2NY(18).

[18] *See* proposed Rule 971.1NY(b)(1)(A).

(upper) bound of executions would be the higher (lower) of the BB plus one cent (BO minus one cent) or the NBB (NBO).[19] If the CUBE Order to buy (sell) is for fewer than 50 contracts, the upper bound of executions would be the lower (higher) of the CUBE Order's limit price, the NBO (NBB), or the BO minus one cent (BB plus one cent) and the lower (upper) bound of executions would be the higher (lower) of the NBB (NBO) or the BB plus one cent (BO minus one cent).[20]

An added stipulation regarding the initiation of a CUBE Auction relates to the Exchange's ''Trade Collar Protection'' rules, which are utilized to mitigate the risk of advancing too far through the Consolidated Book during periods of increased volatility or reduced liquidity.[21] A Marketable Order (as defined in Rule 967NY(a)(1)) held at a Trading Collar (as defined in Rule 967NY(a)(2)) represents interest that is eligible to trade at a specific price, even though that price is not displayed. The Exchange determined that such orders must be taken into consideration in determining the range of permissible executions in a CUBE Auction.

Thus, under the proposal, if, at the time a CUBE Order is submitted, there are orders subject to Trade Collar Protection, *i.e.,* collared orders, the range of permissible executions for the CUBE Order would be narrowed to ensure the priority of the collared order(s). Pursuant to proposed Rule 971.1NY(b)(1)(D), if at the time the CUBE Auction is initiated, there is a Marketable Order to sell (buy) that has been displayed pursuant to Rule 967NY(a)(4)(A), the displayed price of the collared order minus (plus) one Trading Collar would be considered the BO (BB) when determining the range of permissible executions.[22]

A CUBE Order, once accepted, would never execute outside the range of permissible executions and would never trade through its own limit price nor would unrelated quotes and orders that participate in the CUBE Auction trade through their own limit price.[23]

C. Time of Execution and Duration of the CUBE Auction

Proposed Rule 971.1NY(b) would set forth that the time at which the CUBE Auction is initiated would be considered the time of execution for the CUBE Order.[24] Thus, the Exchange stated, even though the execution would print after the CUBE Auction has completed, the CUBE Auction would qualify for the exception to the general prohibition against Trade-Throughs for stopped orders.[25] Similarly, according to the Exchange, because the CUBE Auction would have a maximum duration of 750 milliseconds (as discussed below), to the extent that the NBBO may improve during the Auction, the CUBE Auction also would qualify for the exception to Trade-Through liability for transactions within one second prior to execution of the transaction.[26]

D. Causes for Rejection of a CUBE Order

Rule 971.1NY(b) sets forth several instances in which a CUBE Order would be ineligible to commence an Auction and would be rejected along with its accompanying Contra Order. The Auction will reject CUBE Orders that are submitted to buy (sell) with a limit price below (above) the lower (upper) bound of the permissible range of executions;[27] and those that are submitted before the opening of trading;[28] during the final second of the trading session;[29] when the BBO is one cent wide if the CUBE Order is for fewer than 50 contracts;[30] and when the NBBO is crossed.[31]

E. Price Increments and Minimum Size

As noted above, CUBE Orders and Contra Orders would be permitted to be entered in one cent increments regardless of the MPV of the series being traded.[32] Contra Orders may be priced in such increments when the Initiating Participant elects to submit a single stop price or the auto-match limit price.[33] In addition, the minimum size requirement for a CUBE Order is one contract.[34]

F. Initiation of the CUBE Auction Process

To initiate a CUBE Auction, the Initiating Participant would be permitted to elect one of three ways in which it would guarantee the execution of a CUBE Order—a single stop price, ''auto-match'', or ''auto-match limit.''[35]

The Initiating Participant may elect to specify a single stop price, at which it would participate in the CUBE Auction at a single price only, regardless of the prices of other responses to the CUBE Auction. For a CUBE Order to buy (sell), an Initiating Participant would be permitted to specify a single stop price that is at or below (above) the initiating price of the CUBE Auction.[36]

[19] *See* proposed Rule 971.1NY(b)(1)(B).

[20] *See also* Notice, 79 FR at 13713 for examples illustrating the initiating price and the permissible ranges of executions for various potential CUBE Orders. As discussed in further detail below, the provision concerning a CUBE Order for fewer than 50 contracts was proposed by NYSE MKT on a pilot basis. The Exchange stated that this is consistent with how electronic price improvement mechanisms of other markets operate, citing to CBOE Rule 6.74A Interpretation and Policies .03; PHLX Rule 1080(n)(vii); ISE Rule 723 Supplementary Material .03; and BOX IM–7150–1. *Id.*

[21] *See* Rules 967NY(a)(1) and 967NY(a)(4)(A).

[22] *See* Rule 967NY(a)(2).

See also Notice, 79 FR at 13713 for an example illustrating Trade Collar Protection.

[23] *See* Notice, 79 FR at 13714. *See also* Amendment No. 2, *supra* note 4.

[24] The Exchange stated that, as a result, even though the execution would print after the CUBE Auction has completed, the CUBE Auction would qualify for an exception to the general prohibition against Trade-Throughs of the NBBO, pursuant to Rule 991NY(b)(9) (Order Protection, Exceptions to Trade-Through Liability) (''The transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop''). Similarly, because the CUBE Auction would have a maximum duration of 750 milliseconds (as discussed below), to the extent that the NBBO may improve during the Auction, the Exchange stated that the CUBE Auction also would qualify for an exception to Trade-Through liability, pursuant to Rule 991NY(b)(5) (Order Protection, Exceptions to Trade-Through Liability) (''The Eligible Exchange displaying the Protected Quotation that was traded through had displayed, within one second prior to execution of the Trade-Through, a Best bid or Best offer, as applicable, for the options series with a price that was equal or inferior to the price of the Trade-Through transaction''). The Exchange stated that the proposed CUBE Auction is consistent with how the electronic price improvement auctions of other markets operate. *See, e.g.,* CBOE Rule 6.74A; PHLX Rule 1080(n); BOX Rule 7150; ISE Rule 723.

[25] *See* Rule 991NY(b)(9).

[26] *See* Rule 991NY(b)(5).

[27] *See* proposed Rule 971.1NY(b)(2). *See also* Notice, 79 FR at 13713 for an example illustrating such a case. The Exchange stated that it is appropriate to reject CUBE Orders to buy (sell) that are priced below (above) the lower (upper) bound because they are not the best-priced interest available and should not trade ahead of better-priced interest on the same side of the market. *Id.* at 13713–14.

[28] *See* proposed Rule 971.1NY(b)(4). The Exchange stated that it is appropriate to reject such CUBE Orders because a CUBE Order is deemed executed at the time of entry, and any CUBE Orders entered before the opening of trading would not be able to execute. *See* Notice, 79 FR at 13714.

[29] *See* proposed Rule 971.1NY(b)(5). The Exchange stated that, as the length of the CUBE Auction would be at least 500 milliseconds, it is appropriate to reject CUBE Orders submitted during the final second of the trading session to assure that the processing of a CUBE Order may be completed. *See* Notice, 79 FR at 13714.

[30] *See* proposed Rule 971.1NY(b)(6). The Exchange stated that it is appropriate to reject CUBE Orders in such scenarios because such orders would not be able to meet the permissible range of executions. *See* Notice, 79 FR at 13714.

[31] *See* proposed Rule 971.1NY(b)(9). The Exchange stated that this is appropriate because the Exchange would not be able to determine a permissible range of executions if the NBBO is crossed. *See* Notice, 79 FR at 13714.

[32] *See* proposed Rule 971.1NY(b)(7).

[33] *Id.* ''Single stop price'' and ''auto-match limit'', as well as a third option, ''auto-match'', are discussed in Section III.0., *infra.*

[34] *See* proposed Rule 971.1NY(b)(8). As discussed in Section III.0., *infra,* CUBE Orders for fewer than 50 contracts would be subject to a pilot program.

[35] *See* proposed Rule 971.1NY(c)(1).

[36] *See* proposed Rule 971.1NY(c)(1)(A).

A stop price specified for a CUBE Order to buy (sell) that is below (above) the lower (upper) bound of the range of permissible executions would be repriced to the lower (upper) bound (*i.e.,* the best-priced interest on the opposite side of the CUBE Order).[37] In this instance, the stop price is below the lower bound of permissible execution prices, and thus, the Exchange explains, the execution could be priced back to within the permissible execution range.[38] However, a stop price specified for a CUBE Order to buy (sell) that is above (below) the initiating price would not be eligible to initiate a CUBE Auction.[39] The Exchange explains that, because in such an instance, the stop price is inferior to the pre-existing trading interest, it would not result in an execution within the permissible range.[40] Both the CUBE Order and the Contra Order would be rejected.[41]

The Initiating Participant may elect the ''auto-match'' option, which would automatically match both the price and size of all RFR Responses.[42] Accordingly, the Initiating Participant could receive executions at multiple prices. Where the auto-match option is selected for a CUBE Order to buy (sell), the Initiating Participant would automatically match as principal or as agent on behalf of a Contra Order the price and size of all RFR Responses that are lower (higher) than the initiating price and within the range of permissible executions.[43]

The Initiating Participant may elect the ''auto-match limit'' option, which for a CUBE Order to buy (sell) would automatically match the price and size of all RFR Responses at each price level that is lower (higher) than the initiating price down (up) to a specified limit price, referred to as the ''auto-match limit price.'' [44] Thus, for a CUBE Order to buy (sell), the Initiating Participant would automatically match, as principal or as agent on behalf of a Contra Order, the price and size of RFR Responses that are lower (higher) than the initiating price down (up) to the auto-match limit price.[45]

Only one Auction would be permitted to be conducted at one time.[46] In addition, once an Auction has commenced, the Initiating Participant would not be permitted to cancel or modify either the CUBE Order or the Contra Order.[47]

G. Request for Responses, Response Time Interval, Responses, and Unrelated Orders and Quotes That Are Posted to the Consolidated Book

Upon receipt of a valid CUBE Order (*i.e.,* the CUBE Order is not rejected), the Exchange would announce the CUBE Auction by disseminating an RFR to all participants who subscribe to receive RFR messages, which, the Exchange stated, would be included in the data feed from ArcaBook for options.[48] As noted above, the RFR would identify the following characteristics of a CUBE Order: The series, the side of the market, the size, and the initiating price.

Once the RFR is disseminated, ATP Holders would be able to enter responses to the Auction for the duration of the CUBE Auction (''Response Time Interval''), which would last for a random period of time between 500 and 750 milliseconds.[49] The Exchange stated that the length of the Response Time Interval would be determined by the CUBE Auction mechanism following the receipt of a valid CUBE Order and contemporaneously with the dissemination of the RFR.[50]

The Exchange stated that the use of an undisclosed random Response Time Interval of between 500 and 750 milliseconds would provide the CUBE Auction with a functional difference to distinguish it from similar price improvement mechanisms offered by other exchanges.[51] The Exchange remarked that the length of time allotted on the CUBE Auction timer would provide ATP Holders with sufficient time to submit RFR Responses and would encourage competition among participants, thereby enhancing the potential for price improvement for the CUBE Order.[52]

The Exchange stated that any ATP Holder would be able to respond to the RFR, either as principal or as agent on behalf of customers, provided that the RFR Response was properly marked specifying price, size, and side of the market.[53] Proposed Rule 971.1NY would introduce a new order type, the ''GTX Order,'' to serve as one way to respond to a CUBE Auction, designed solely for that purpose.[54] A ''GTX Order'' would be defined as a non-routable order with a time-in-force contingency for the Response Time Interval and would be required to specify price, size, and side of the market.[55] GTX Orders would not be displayed to the Consolidated Book nor disseminated to any participants [56] because, as explained by the Exchange, these orders would interact only with liquidity available during the Auction.[57] The minimum price increment for a GTX Order would be one cent, regardless of the MPV for the series subject to the Auction.[58] ATP Holders that submitted GTX Orders would be permitted to cancel them.[59]

[37] *See id. See also infra* note 55 for the Exchange's explanation of this provision.

[38] *See* Notice, 79 FR at 13714.

[39] *See* proposed Rule 971.1NY(c)(1)(A).

[40] *See* Notice, 79 FR at 13714–15.

[41] *See* Notice, 79 FR at 13715 for an example illustrating the impact of various single stop prices on a CUBE Order.

[42] *See* proposed Rule 971.1NY(c)(1)(B). *See* Section III.0., *infra,* for a discussion of RFR Responses.

[43] *See id. See also* Notice, 79 FR at 13715 for an example illustrating the impact of auto-match on a CUBE Order.

[44] *See* proposed Rule 971.1NY(c)(1)(C).

[45] *See id. See also* Notice, 79 FR at 13715 for an example illustrating the impact of auto-match limit on a CUBE Order.

[46] *See* proposed Rule 971.1NY(c).

[47] *See id.* The Exchange stated that this requirement reduces the potential for misuse of the CUBE Auction by ATP Holders that are not legitimately interested in making a bona fide trade in the CUBE Auction. *See* Notice, 79 FR at 13715. *See also* Amendment No. 2, *supra* note 4, which would revise the rule text to clarify that the Contra Order may not be cancelled or modified.

[48] *See supra* note 10 for a description of ArcaBook.

[49] *See* proposed Rule 971.1NY(c)(2).

[50] *See* Notice, 79 FR at 13715.

[51] *See id. See also, ≤e.g.,* CBOE Rule 6.74A(b)(2)(A); PHLX Rule 1080(n)(ii)(B)(1); ISE Rule 723(c)(5)(I).

[52] The Exchange stated that in December 2013, to determine whether the CUBE Auction timer would provide sufficient time to respond to an RFR, the Exchange asked ATP Holders that both subscribe to ArcaBook and act as Market Makers on the Exchange (''Relevant ATP Holders'') whether their firms ''could respond to an Auction with a random duration of 500–750 milliseconds.'' The Exchange reported that, of the 21 Relevant ATP Holders that responded to the question, 100% (n=21) indicated that their firms could respond in this time frame. Thus, the Exchange stated that the CUBE Auction duration of at least 500 milliseconds, which the Exchange noted is the mid-range of auction mechanisms at other market centers, would provide a meaningful opportunity for participants on NYSE Amex to respond to an Auction while at the same time facilitating the prompt execution of orders. *See* Notice, 79 FR at 13715, n.29.

[53] *See* proposed Rule 971.1NY(c)(2)(C).

[54] *See* proposed Rule 971.1NY(c)(2)(C)(i).

[55] *See* proposed Rule 971.1NY(c)(2)(C)(i). For a CUBE Order to buy (sell), a GTX Order priced below (above) the lower (upper) bound of executions would be repriced to the lower (upper) bound of executions as specified in proposed Rule 971.1NY(b)(1). *See* proposed Rule 971.1NY(c)(2)(C)(i)(f). According to the Exchange, such repricing would ensure that GTX Orders eligible to participate in the Auction would not be excluded if they are priced more aggressively than the lower (upper) bound of execution. *See* Notice, 79 FR at 13716 for an example illustrating the repricing of a GTX Order.

[56] *See* proposed Rule 971.1NY(c)(2)(C)(i)(a).

[57] Any portion of a GTX Order that is not executed in the CUBE Auction would be cancelled at the conclusion of the Auction. *See id.* However, *see infra* notes 75–76 and accompanying text for a case in which a GTX Order would interact with an unrelated order that arrived on the Exchange on the CUBE Order's side of the market.

[58] *See* proposed Rule 971.1NY(c)(2)(C)(ii)(a).

[59] *See* proposed Rule 971.1NY(c)(2)(C)(i)(d).

In addition, any unrelated orders and quotes received on the opposite side of the CUBE Order during the Response Time Interval and in the same series at the CUBE Order would be considered as RFR Responses that are eligible to participate in the Auction, provided that such unrelated orders and quotes are priced within the permissible range of executions, are not marked as GTX Orders, and are not marketable against the NBBO. The Exchange stated that considering these unrelated orders and quotes as RFR Responses—even if submitted coincidentally, as opposed to purposefully in response to an RFR—should increase the number of participants against which the CUBE Order may be executed, and should thus maximize opportunities for price improvement on the CUBE Order.[60] Such opposite-side, unrelated orders and quotes would be posted to the Consolidated Book[61] and, if they are at the best RFR Response price at the conclusion of the Auction, they would participate in the execution of the CUBE Order.[62]

Unrelated orders and quotes would be able to participate in an Auction, however, only if priced in the MPV for the series in the CUBE Auction.[63] Only CUBE Orders, GTX Orders and Contra Orders—which are specifically slated for the CUBE Auction—would be permitted to be priced in one cent increments, regardless of the MPV for that option.[64] Thus, an order or quote other than a CUBE Order, GTX Order or Contra Order submitted in a one cent increment when the series has either a $0.05 or $0.10 MPV would be rejected as invalid.

Unrelated orders and quotes arriving on the Exchange during the Response Time Interval on the same side of the market as the CUBE Order likewise would be posted on the Consolidated Book, provided that those orders and quotes do not cross the initiating price.[65] If such an order or quote does cross the initiating price—*i.e.,* if an order to buy (sell) is priced higher (lower) than the initiating price—it would cause the CUBE Auction to conclude early and the unrelated order would be then posted to the Consolidated Book.[66]

H. Conclusion of the CUBE Auction and Order Allocation

Unless there is an early conclusion to the Auction, as described more fully below, the CUBE Auction would conclude at the end of the Response Time Interval[67] and the CUBE Order would be allocated among the participants in the Auction at the best prices as set forth in proposed Rule 971.1NY(c)(5), as follows:

The Auction mechanism would determine whether the RFR Responses can fill the CUBE Order at a price or prices better than the initiating price. If so, the CUBE Order is matched against the better-priced RFR Responses, thereby granting the CUBE Order the maximum amount of price improvement possible.

When there are multiple RFR Responses at a given price, at each price level, any Customer orders resting on the Consolidated Book at the start of the CUBE Auction would have first priority, followed by Customer orders that arrived during the CUBE Auction as RFR Responses. The remaining contracts would be allocated among the RFR Responses at that price level on a pro rata basis in accordance with the size pro rata algorithm set forth in Rule 961.1NY(b)(3),[68] subject, however, to the following:

If sufficient interest in the CUBE Order remains after executing against Customer interest or better priced interest, the Contra Order then would be entitled to a participation guarantee equal to the greater of one contract or either (a) 40% of the size of the initial CUBE Order (if there are multiple RFR Responses to the CUBE Auction) or (b) 50% of the size of the initial CUBE Order (if there is only one RFR Response to the CUBE Auction). The remaining contracts would then be allocated among the RFR Responses pursuant to the pro rata trading algorithm.[69] If all RFR Responses were filled, any remaining CUBE Order contracts would be allocated to the Contra Order.

As discussed above, an Initiating Participant can opt to guarantee the execution of a CUBE Order by specifying a single stop price, auto-match or an auto-match limit price.[70] Proposed Rule 971.1NY(c)(5)(B)(i)–(iii) sets forth the details of how an order is allocated in the case of each of these elections.[71]

Where the Initiating Participant elects auto-match or auto-match limit to guarantee the execution of a CUBE Order, the Contra Order would be allocated size equal to all other RFR Responses at each price point or at each price point within the limit price range—if a limit is specified—until a price point is reached where the balance of the CUBE Order could be fully executed (the ''clean-up price''). At the clean-up price, if there is sufficient interest in the CUBE Order remaining after better-priced interest and Customer interest has been executed, the Contra Order would be allocated additional contracts to ensure its guaranteed participation rate—the greater of one contract or 40% (or 50%, if only one Response) of the size of the initial CUBE Order. If the Contra Order met its allocation guarantee at a price below (above) the clean-up price, it would cease matching RFR Responses that may be priced above (below) the price at which the Contra Order received its allocation guarantee. In addition, if there were other RFR Responses at the clean-up price, the remaining CUBE Order contracts would be allocated pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3) and any remaining CUBE Order contracts shall be allocated to the Contra Order at the initiating price. In the event that there were no RFR Responses to the Auction and an auto-match feature is selected, the CUBE Order would execute against the Contra Order at the initiating price.

I. Early Conclusion of a CUBE Auction

Proposed Rule 971.1NY describes certain events that would cause a CUBE

[60] *See* Notice, 79 FR at 13716.

[61] *See generally* Rule 964NY(a) (''The System shall display to Users all non-marketable limit orders in the Display Order Process, unless indicated otherwise'').

[62] Any portion of these unrelated orders or quotes remaining after the CUBE Order is executed would remain on the Consolidated Book and processed in accordance with Rule 964NY, the Exchange's options priority and order allocation rules. *See* proposed Rule 971.1NY(c)(5)(C).

[63] *See* proposed Rule 971.1NY(c)(2)(C)(ii)(c).

[64] *See id.*

[65] *See generally* Rule 964NY(a) (''The System shall display to Users all non-marketable limit orders in the Display Order Process, unless indicated otherwise'').

[66] *See id. See also infra* note 86 and accompanying text for a more detailed discussion of this provision.

[67] *See* proposed Rule 971.1NY(c)(3). However, as described in proposed Rule 971.1NY(c)(4) (and discussed below), certain events may result in the early conclusion of the CUBE Auction.

[68] Any single RFR Response that has a contract size that exceeds the size of the CUBE Order would be treated as if it were the same size as (*i.e.,* would be capped at) the size of the CUBE Order for allocation purposes. *See* Proposed Rule 971.1NY(c)(5). The Exchange stated that this encourages participation in the CUBE Auction (by not rejecting these RFR Responses) and assists in avoiding the opportunity for an ATP Holder to subvert the size pro rata allocation method by submitting outsized trading interest. *See* Notice, 79 FR at 13717.

[69] The Exchange stated that the participation guarantee is a fair inducement in exchange for guaranteeing that the entire size the CUBE Order, for which the Initiating Participant is an agent, and is consistent with the rules of NYSE MKT and other option exchanges. *See* Notice, 79 FR at 13717.

[70] *See supra* notes 35–45 and accompanying text.

[71] *See* Notice, 79 FR at 13717–18 for examples illustrating trade allocations for guarantees with a single stop price, with auto-match and with auto-match limit.

Auction to conclude early (*i.e.,* before the end of the Response Time Interval) and sets forth how the CUBE Order is to be allocated in each case.

Pursuant to proposed Rule 971.1NY(c)(3), a trading halt in the affected series would result in the early conclusion of an Auction.[72] In such case, the CUBE Order would execute according to the procedures set forth in proposed Rule 971.1NY(c)(5).

Proposed Rule 971.1NY(c)(4) describes additional events where a CUBE Auction would conclude early. First, if, during a CUBE Auction, a new CUBE Auction in the same series is received by the Exchange, the original CUBE Order would conclude and execute according to the procedures set forth in proposed Rule 971.1NY(c)(5).[73] The new CUBE Auction would proceed as described in proposed Rule 971.1NY(c).

Second, if, during a CUBE Auction, the Exchange receives an unrelated order or quote on the same side of the market as the CUBE Order that is marketable against any RFR Response or the NBBO (or BBO, if a non-routable order [74]) at the time of arrival, the CUBE Auction would conclude early and the CUBE Order would be executed according to the procedures for a full term auction set forth in proposed Rule 971.1NY(c)(5).[75] In this circumstance, however, any GTX Orders that do not execute in the CUBE Auction would execute against the unrelated order or quote that caused the CUBE Auction to conclude early to the extent possible and would then cancel.[76] Any contracts remaining from the unrelated order or quote would then be posted to the Consolidated Book and processed in accordance with the Rule 964NY.[77]

Third, a CUBE Auction would conclude early if, during the Auction, the Exchange receives any RFR Response (that is, on the opposite side of the CUBE Order) that is marketable against the NBBO (or BBO, if a non-routable order) at the time of arrival.[78] The Auction would conclude early whether the RFR Response was a GTX Order or an unrelated order or quote that is a marketable limit order or a market order.[79] However, the allocation would differ, as follows:

- If the CUBE Auction concluded early because the Exchange received during the Response Time Interval an unrelated marketable limit order or quote on the opposite side of the CUBE Order, the CUBE Order would execute in accordance with the procedures set forth in proposed Rule 971.1NY(c)(5). Contracts remaining, if any, from unrelated orders or quotes at the time the CUBE Auction concludes would be processed in accordance with Rule 964NY. Any unfilled GTX Orders would cancel.[80]
- If the opposite-side order that caused the CUBE Auction to conclude early was a market order, the allocation of the CUBE Order would vary, depending on how the Initiating Participant guaranteed the execution of the CUBE Order and what, if any, RFR Responses were received before the CUBE Auction concluded.
- If the Initiating Participant selected auto-match and no RFR Responses had been received before the market order arrived that caused the CUBE Auction to conclude early, if the CUBE Order is to buy (sell), the CUBE Order would execute against the market order at the midpoint of the initiating price and the lower (upper) bound of the range of permissible executions.[81] If no midpoint is possible, the execution would be rounded up (down) to the nearest whole penny toward the initiating price. Any unfilled size of the CUBE Order will then execute according to the procedures set forth in proposed Rule 971.1NY(c)(5).[82]
- If the Initiating Participant selected auto-match and other RFR Responses are received before the arrival of the market order that caused the CUBE Auction to conclude early, if the CUBE Order is to buy (sell) and the market order is to sell (buy), the CUBE Order would execute against the unrelated market order at the lowest (highest) RFR Response price within the range of permissible executions. Any unfilled size of the CUBE Order would then execute according to the procedures set forth in proposed Rule 971.1NY(c)(5).[83]
- If the Initiating Participant selected a single stop price or auto-match limit to guarantee the execution of a CUBE Order to buy (sell) and a market order to sell (buy) caused the CUBE Auction to conclude early, the CUBE Order would execute against the unrelated market order at the lowest (highest) price at which an execution could occur within the range of permissible executions, which may be either an RFR Response price, the single stop price, or the auto-match limit price. Any unfilled size of the CUBE Order would then execute according to the procedures set forth in proposed Rule 971.1NY(c)(5).[84]

[72] *See* proposed Rule 971.1NY(c)(3).

[73] *See* proposed Rule 971.1NY(c)(4)(A).

[74] The Exchange's rules provide that an order that has been designated as an order type that is not eligible to be routed away would either be placed on the Consolidated Book or cancelled if such order would lock or cross the NBBO. *See* Rule 964NY(c)(2)(E). The Exchange noted that, if an incoming non-routable order is marketable against the NBBO, but not the BBO, and by its terms, such order, *e.g.,* an IOC Order, would cancel, it would not cause an early conclusion to an Auction. However, if such an order were marketable against the BBO, *i.e.,* if the BBO equaled the NBBO, it would cause an early conclusion to the CUBE Auction. *See* Notice, 79 FR at 13719, n.40.

[75] *See* proposed Rule 971.1NY(c)(4)(B). *See also* Notice, 79 FR at 13719 for an example illustrating the early conclusion of the Auction due to a same side order marketable against the NBBO at the time of arrival. The Exchange stated the early conclusion of the Auction in this instance would ensure that the priority of quotes and orders on the Consolidated Book would not be disrupted.

[76] *See* proposed Rule 971.1NY(c)(4)(B).

[77] *See id.*

[78] *See* proposed Rule 971.1NY(c)(4)(C). The Exchange stated that early conclusion in such circumstances would ensure that the Auction interacts seamlessly with the Consolidated Book so as not to disturb the priority of orders on the Book. The unrelated order or quote that caused the Auction to end early would be considered an RFR Response for purposes of allocation pursuant to proposed Rule 971.1NY(c)(5), and thus would participate in the CUBE Auction consistent with its limit price and order instructions. *See* Notice, 79 FR at 13719.

[79] The Exchange noted that, while the incoming order that is on the opposite side of the CUBE Order may be marketable against an NBBO that updated during the Response Time Interval, the fact that the NBBO updated during the Response Time Interval in of itself does not cause an early conclusion to the CUBE Auction. *Id. See also id.* at 13720 for an example illustrating the early conclusion of an Auction as a result of the arrival of an opposite-side limit order that was marketable against an updated NBBO.

[80] *See* proposed Rule 971.1NY (c)(4)(C)(i). Regarding the cancellation of unfilled GTX Orders, *see also supra* note 57 and accompanying text. *See also* Notice, 79 FR at 13719–20 for examples illustrating the early conclusion of an Auction as a result of the arrival of an opposite-side marketable limit order.

[81] *See* proposed Rule 971.1NY(c)(4)(C)(ii). *See also* Notice, 79 FR at 13720 for an example illustrating the early conclusion of an Auction due to the arrival of an opposite-side market order in a case where auto-match was selected and no RFR Responses had been received. The Exchange stated that rounding in the manner described ensures not only that the CUBE Order is afforded price improvement, but also that the priority of existing interest in the Consolidated Book is protected. *Id.*

[82] As discussed above, the Exchange stated that the CUBE Auction would be permitted to execute orders in the CUBE Auction as exceptions to Trade-Through Liability pursuant to Rule 991NY(b)(5). Accordingly, an opposite-side market order that arrives during the CUBE Auction, which by definition is less than a second, may trade through any updated NBBO published by an away market. Because, pursuant to proposed Rule 971.1NY(b)(3), an update to the CUBE Order's same-side BBO would update the permissible range of executions, an opposite-side market order would execute consistent with that updated permissible range of executions. *See* Notice, 79 FR at 13720, n.49.

[83] *See* proposed Rule 971.1NY(c)(4)(C)(iii). *See also* Notice, 79 FR at 13721 for an example illustrating the early conclusion of an Auction as a result of the arrival of an opposite-side market order in a case where auto-match was selected and other RFR Responses were received.

[84] *See* proposed Rule 971.1NY(c)(4)(C)(iv). *See also* Notice, 79 FR at 13721 for examples illustrating the early conclusion of an Auction as a result of the arrival of an opposite-side market order where the Initiating Participant had selected a single stop price or the auto-match limit option.

Fourth, the CUBE Auction also would conclude early upon the arrival of an unrelated, non-marketable quote or limit order on the same side as the CUBE Order that improves the CUBE Order's initiating price.[85] Specifically, if, during a CUBE Auction where the CUBE Order is to buy (sell), the Exchange receives such an order that is priced higher (lower) than the initiating price, and therefore creates a new BB (BO) that is higher (lower) than the initiating price, the CUBE Order would first execute against the RFR Response according to the procedures set forth in proposed Rule 971.1NY(c)(5).[86] Any unfilled GTX Orders would be eligible to execute against the unrelated order or quote that caused the CUBE Auction to conclude early and would then cancel. Any contracts that remain from the unrelated non-marketable order after that order traded against interest in the CUBE Auction would then be processed in accordance with Rule 964NY.[87]

Fifth, a CUBE Auction would conclude early when an All-or-None (''AON'') order is present on the same side as the CUBE Order. An AON order, whether it was resting on the book prior to an Auction or it arrived during Auction, would be permitted to trade only if sufficient size remained to fill the entire AON order after the CUBE Order was fully executed. If sufficient interest to fill an entire AON order was received during the Response Time Interval, the Auction would conclude early and the CUBE Order would be executed according to procedures set forth in proposed Rule 971.1NY(c)(5). After the Auction concluded, the Exchange would evaluate whether the AON could be executed.[88]

J. Conduct Inconsistent With Just and Equitable Principles of Trade

The Exchange is proposing Commentary .02 to the proposed Rule to state that certain activity in connection with the CUBE Auction would be considered conduct inconsistent with just and equitable principles of trade to discourage ATP Holders from attempting to misuse or manipulate the CUBE Auction process. The following would be considered inconsistent with just and equitable principles of trade: (1) An ATP Holder entering RFR Responses to a CUBE Auction for which the ATP Holder is the Initiating Participant; (2) an ATP Holder engaging in a pattern and practice of trading or quoting activity for the purpose of causing a CUBE Auction to conclude early; (3) the Initiating Participant breaking up an agency order into separate CUBE Orders for the purpose of gaining a higher allocation percentage; and (4) an ATP Holder engaging in a pattern or practice of sending multiple RFR Responses at the same time that exceed the size of the CUBE Order.[89]

K. Order Exposure

Rule 935NY prohibits ATP Holders from executing as principal any orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second or (ii) the ATP Holder has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer. According to the Exchange, Rule 935NY helps to ensure that orders are properly exposed to market participants, affording them reasonable time in which to participate in the execution of agency orders.[90]

The Exchange stated that the Response Time Interval, with a random length of between 500 and 750 milliseconds, would be of sufficient length to permit ATP Holders time to respond to a CUBE Auction, thereby enhancing opportunities for competition among participants and increasing the likelihood of price improvement for the CUBE Order.[91] Accordingly, the Exchange's proposal would amend Rule 935NY to state that a CUBE Order would not be subject to the one-second order exposure requirement of Rule 935NY. The Exchange stated that, consistent with Rule 935NY, Commentary .01, ATP Holders would be permitted to utilize the CUBE Auction only where there is a genuine intention to execute a bona fide transaction.[92]

L. Proposed Pilot Period for Auctions of Fewer Than 50 Contracts

Under the proposal, proposed Rules 971.1NY(b)(1)(B), which relates to CUBE Auctions for fewer than 50 contracts, and 971.1NY(b)(8), which states that the minimum size for a CUBE Auction would be one contract, would be adopted for a pilot period effective for one year beginning on the approval date of the proposed rule change (''Pilot Period'').[93] The Exchange stated that, during the Pilot Period, it would submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the CUBE Auction.[94]

[85] *See* proposed Rule 971.1NY(c)(4)(D). *See also supra* note 66 and accompanying text.

[86] *See* proposed Rule 971.1NY(c)(5) regarding the allocation procedures of a full-term Auction, discussed above. The Exchange stated that early conclusion would avoid disturbing priority in the Consolidated Book, in accordance with Rule 964NY, which dictates the priority of bids within the NYSE Amex System, and would allow the Exchange to appropriately handle unrelated orders without the CUBE Auction impacting that handling, while at the same time allowing the CUBE Order to execute against the Contra Order and any RFR Responses that may have been entered up to that point. *See* Notice, 79 FR at 13716.

[87] *See* Notice, 79 FR at 13722 for an example illustrating the early conclusion of an Auction due to a same-side order that creates a new BBO that improves the initiating price. The Exchange stated that early conclusion in this circumstance would ensure that the CUBE Auction interacts seamlessly with the Consolidated Book so as not to disturb the priority of orders on the Book, while affording the CUBE Order (and the unrelated order) opportunities for price improvement. *Id.*

[88] *See* Notice, 79 FR at 13722 for an example illustrating the early conclusion of an Auction due to sufficient interest to fill a resting AON order. The Exchange stated that early conclusion in this circumstance would ensure that the CUBE Auction interacts seamlessly with the Consolidated Book so as not to disturb the priority of orders on the Book, while affording the CUBE Auction opportunities for price improvement. *Id.*

[89] *See also infra* note 92 discussing Rule 935NY, Commentary .01.

[90] *See* Notice, 79 FR at 13722.

[91] *See supra* note 52.

[92] *See* Notice, 79 FR at 13237. Rule 935NY, Commentary .01, states: ''Rule 935NY prevents a[n ATP Holder] from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the [ATP Holder] was already bidding or offering on the book.''

[93] *See* proposed Rule 971.1NY, Commentary .01.

[94] To aid the Commission in its evaluation of the Pilot Program, the Exchange will provide the following additional information each month: (1) The number of orders of 50 contracts or greater entered into the CUBE Auction; (2) The number of orders of fewer than 50 contracts entered into the CUBE Auction; (3) The percentage of all orders of 50 contracts or greater sent to the Exchange that are entered into the CUBE; (4) The percentage of all orders of fewer than 50 contracts sent to the Exchange that are entered into the CUBE Auction; (5) The percentage of all Exchange trades represented by orders of fewer than 50 contracts; (6) The percentage of all Exchange trades effected through the CUBE Auction represented by orders of fewer than 50 contracts; (7) The percentage of all contracts traded on the Exchange represented by orders of fewer than 50 contracts; (8) The percentage of all contracts effected through the CUBE Auction represented by orders of fewer than 50 contracts; (9) The spread in the option, at the time an order of 50 contracts or greater is submitted into the CUBE Auction; (10) The spread in the option, at the time an order of fewer than 50 contracts is submitted into the CUBE Auction; (11) Of CUBE Auction trades for orders of fewer than 50 contracts, the percentage of CUBE Auction trades executed at the NBBO, NBBO plus $.01, NBBO plus $.02, NBBO plus $.03, etc.; (12) Of CUBE Auction trades for orders of 50 contracts or greater, the percentage of CUBE Auction trades executed at the NBBO, NBBO plus $.01, NBBO plus $.02, NBBO plus $.03, etc.; and (13) The number of orders submitted by an ATP Holder when the bid-ask spread was at a particular increment (*e.g.,* $.01, $.02, $.03, etc.). Also, relative to Item 13, for each spread, the Exchange will provide the percentage of contracts in orders of fewer than 50 contracts submitted to the CUBE Auction where the contra-

Continued

The Exchange further states that any data that is submitted to the Commission will be provided on a confidential basis.[95]

M. Implementation

The Exchange stated that it would announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval. The implementation date would be no later than 60 days following publication of the Trader Update announcing Commission approval. The Exchange stated that this implementation schedule would provide ATP Holders with adequate notice of the CUBE Auction and would allow ample time for ATP Holders to prepare their systems for participation in the CUBE Auction process, if such participation is desired.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[96] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) of the Act,[97] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes that approving the Exchange's proposal to establish the CUBE Auction mechanism may increase competition among those options exchanges that offer similar mechanisms. The Commission further believes that allowing ATP Holders to enter orders into the CUBE Auction mechanism may provide additional opportunities for such orders to receive price improvement over the NBBO.

The Exchange's CUBE Auction mechanism is similar to electronic price improvement auction mechanisms available at other options exchanges.[98] The features of the CUBE Auction are similar in many aspects to the features found in the price improvement mechanisms of other exchanges, including: The characteristics of the CUBE Order that are identified in the RFR;[99] the auto-match and auto-match limit options;[100] the participation guarantee allocated to the Initiating Participant;[101] early conclusions of the auction in specific circumstances, including trading halts[102] and same-side unrelated orders that create a BBO that crosses the initiating price;[103] and provisions regarding just and equitable principles of trade.[104]

The Commission notes that the initiating price would be equal to or better than the NBBO at the time of commencement of the CUBE Auction and that an ATP Holder that enters a

side was: (a) The ATP Holder that submitted the order to the CUBE Auction; (b) market makers assigned to the class; (c) other Exchange Participants; (d) Customers; (e) Professional Customers and (f) unrelated orders. For each spread, also specify the percentage of contracts in orders of 50 contracts or greater submitted to the CUBE Auction where the contra-side was: (a) The ATP Holder that submitted the order to the CUBE Auction; (b) market makers assigned to the class; (c) other Exchange Participants; (d) Customers; (e) Professional Customers and (f) unrelated orders. *See, e.g.,* Securities Exchange Act Release Nos. 53222 (February 3, 2006); 71 FR 7089 (February 10, 2006) (File No. SR–CBOE–2005–60); 63027 (October 1, 2010); 75 FR 62160 (October 7, 2010) (File No. SR–Phlx–2010–108); and 66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (File No. 10–206).

[95] Further, the Exchange will provide, for the first and third Wednesday of each month, the: (A) Total number of CUBE Auctions on that date; (B) number of CUBE Auctions where the order submitted to the CUBE Auction was fewer than 50 contracts; (C) number of CUBE Auctions where the order submitted to the CUBE Auction was 50 contracts or greater; (D) number of CUBE Auctions (where the order submitted to the CUBE Auction was fewer than 50 contracts and where the order submitted was 50 contracts or greater) where the number of Participants (excluding the Contra Order) was zero, one, two, three, four, etc. The Exchange will also provide: The percentage of all Exchange trades effected through the CUBE Auction in which the Initiating Participant has elected to auto-match with a limit price and the percentage of such trades in which the Initiating Participant has elected to auto-match without a limit price, and the average amount of price improvement provided to the CUBE Order when the Initiating Participant has elected to auto-match with a limit price and the average without a limit price, versus the average amount of price improvement provided to the CUBE Order when the Initiating Participant has chosen a single stop price.

Finally, during the Pilot Program, the Exchange will provide information each month with respect to situations in which the CUBE Auction is terminated prematurely or a market or marketable limit order immediately executes with an initiating order before the CUBE Auction's conclusion. The following information will be provided: (a) The number of times that the Auction concluded early upon the arrival of an unrelated quote or order that is on the same side of the market as the CUBE Order, that is marketable against any RFR Responses or the NBBO (or the BBO, for a non-routable order) at the time of arrival, and at what time such unrelated order/quote ended the Auction. Also, (i) the number of times such orders were entered by the same (or affiliated) firm that initiated the CUBE Auction that was concluded early, and (ii) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the CUBE Order; (b) For the orders addressed in each of (a)(i) and (a)(ii) above, the percentage of CUBE Auctions that concluded early due to the receipt, during the CUBE Auction, of an unrelated quote or order on the same side of the market as the CUBE Order, that is marketable against any RFR Responses or the NBBO (or the BBO, for a non-routable order) at the time of arrival; and the average amount of price improvement provided to the CUBE Order where the CUBE Auction is concluded early; (c) The number of times that the Auction concluded early upon the arrival of any RFR Response that is marketable against the NBBO (or the BBO, for a non-routable order) at the time of arrival, and at what time such RFR Response ended the Auction. Also, (i) the number of times such RFR Responses were entered by the same (or affiliated) firm that initiated the CUBE Auction, and (ii) the number of times such RFR Responses were entered by a firm (or an affiliate of such firm) that participated in the execution of the CUBE Order; (d) For the orders addressed in each of (c)(i) and (c)(ii) above, the percentage of CUBE Auctions that concluded early due to the receipt, during the CUBE Auction, of any RFR Response that is marketable against the NBBO (or the BBO, for a non-routable order) at the time of arrival; and the average amount of price improvement provided to the CUBE Order where the CUBE Order is immediately executed; (e) The number of times that the Auction concluded early due to a trading halt and at what time the trading halt ended the CUBE Auction. Of the CUBE Auctions that concluded early due to a trading halt, the number that resulted in price improvement over the CUBE Order stop price, and the average amount of price improvement provided to the CUBE Order. Further, in the Auctions that concluded early due to a trading halt, the percentage of contracts that received price improvement over the CUBE Order stop price; (f) The number of times that the Auction concluded early upon the initiation of a new CUBE Auction in the same series and at what time the initiation of a new CUBE Auction ended the ongoing CUBE Auction; (g) The number of times that the Auction concluded early upon the receipt of an order with either an IOC, FOK or NOW contingency and at what time the receipt of such order ended the ongoing CUBE Auction; (h) The number of times that the Auction concluded early because sufficient interest to fill an entire AON order is received during the Response Time Interval and at what time the ongoing CUBE Auction was completed; and (i) The average amount of price improvement provided to the initiating order when the CUBE Auction is not concluded early.

[96] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[97] 15 U.S.C. 78f(b)(5).

[98] *See supra* note 6 and accompanying text.

[99] *See supra* note 48 and accompanying text, and *see, e.g.,* ISE Rule 723(c).

[100] *See supra* notes 42–45 and accompanying text, and *see, e.g.,* Phlx Rule 1080(n)(ii)(A)(1).

[101] *See supra* notes 68–69 and accompanying text. Participation guarantees are a basic feature of electronic improvement mechanisms of all options exchanges that have them.

[102] *See supra* note 72 and accompanying text, and *see, e.g.,* CBOE Rule 6.74A(b)(2)(F) and Phlx Rule 1080(n)(ii)(B)(4).

[103] *See supra* notes 85–87 and accompanying text, and *see, e.g.,* Phlx Rule 1080(n)(ii)(B)(2), which sets forth a very similar provision.

[104] *See supra* note 89 and accompanying text. All the exchanges with electronic price improvement mechanisms have similar rules.

CUBE Order in the CUBE Auction must submit a Contra Order for the full size of that CUBE Order.[105] Once the CUBE Order and the Contra Order are submitted to the Auction, they may not be cancelled or modified.[106] Therefore, a CUBE Order submitted to the CUBE Auction, regardless of its size, would be guaranteed an execution price of at least NBBO at the time the CUBE Auction commences and, moreover, would be given an opportunity for price improvement beyond the NBBO by being exposed to ATP Holders during the CUBE Auction.

The CUBE Auction mechanism also provides for responses to the RFR on behalf of all types of interest, including unrelated quotes and orders as well as GTX Orders that are specifically designated as responses. The Commission believes that this feature provides the potential for a CUBE Order to be exposed to a competitive auction. Further, when the Exchange receives a properly designated CUBE Order for CUBE Auction processing, it will send to all subscribers of its ArcaBook data feed, an RFR detailing the series, side and size of the CUBE Order and the initiating price. This RFR message, available to any ArcaBook subscriber, is designed to help attract responses to a CUBE Auction, which may result in a competitive CUBE Auction and ultimately better prices for the CUBE Order to the extent that the RFR message is successful in attracting competitive responses.

The RFR will be subject to a Response Time Interval for a random period of time between 500 and 750 milliseconds. In December 2013, to determine whether the CUBE Auction timer would provide sufficient time to respond to an RFR, the Exchange asked Relevant ATP Holders whether their firms ''could respond to an Auction with a random duration of 500–750 milliseconds.'' [107] Of the 21 Relevant ATP Holders that responded to the question, all indicated that their firms could respond in this time frame. Based on NYSE MKT's statements, the Commission believes that the random Response Time Interval could facilitate the prompt execution of CUBE Orders in the CUBE Auction, while providing market participants with an opportunity to compete for exposed bids and offers. The Commission notes that it has previously approved auction mechanisms with a random time feature [108] and with a 500 millisecond auction response period.[109]

At the conclusion of a CUBE Auction, Customer orders resting on the Consolidated Book have first priority to trade against the CUBE Order, followed by Customer orders that arrived during the CUBE Auction as RFR Responses. After execution of Customer responses and orders, the Initiating Participant may be allocated a limited percentage of the CUBE Order, not to exceed 40% of the contracts at the applicable price point (except that, if only one response matches the Initiating Participant's single price submission at the best price, then the Initiating Participant may be allocated up to 50% of the order). The Commission notes that the established principles of priority of interest contained in Rule 964NY would apply to the CUBE Auction. The Commission believes that the proposed matching algorithm set forth in proposed Rule 971.1NY is sufficiently clear regarding how orders are to be allocated in the CUBE Auction and does not raise any novel issues.

Under the Exchange's proposal, there would be no minimum size requirement for orders entered into the CUBE for a pilot period expiring on April 25, 2015.[110] The Commission believes that approval of these provisions on a pilot basis is appropriate and that the Exchange's proposal should provide small customer orders with the opportunity for price improvement in a manner that is consistent with the Act. The Commission expects that the data submitted to the Commission by the Exchange will be used by both the Exchange and the Commission staff to analyze whether there is meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the CUBE Auction. In addition, data submitted by the Exchange with respect to situations in which the CUBE Auction is terminated prematurely will afford both the Commission and the Exchange an opportunity to analyze the impact of early terminations and unrelated orders on the CUBE Auction.[111] The Commission will evaluate the CUBE Auction during the Pilot Period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the CUBE Auction .

IV. Section 11(a) of the Act

Section 11(a)(1) of the Act [112] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts''), unless an exception applies. Section 11(a)(1) and the rules thereunder contain a number of exceptions for principal transactions by members and their associated persons, including the exceptions set forth in Rule 11a2–2(T) under the Act.[113] The Exchange has represented that it has analyzed its rule proposed hereunder, and has determined that they are consistent with Section 11(a) of the Act and rules thereunder. For the reason set forth below, the Commission believes that the proposed CUBE Auction rules are consistent with the requirements of Section 11(a) of the Act and the rules thereunder.

A. Rule 11a2–2(T) Under the Act (''Effect Versus Execute'' Rule)

Rule 11a2–2(T) under the Act,[114] known as the ''effect versus execute'' rule, provides exchange members with an exception from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with the conditions of Rule 11a2–2(T), a member: (1) May not be affiliated with the executing member; (2) must transmit the order from off the exchange floor; (3) may not participate in the execution of the transaction once it has been transmitted to the member

[105] Rule 971.1NY(a).

[106] Rule 971.1NY(c). *See also* Amendment No. 2.

[107] *See supra* note 52. *See also* Notice, 79 FR at 13715, n.29.

[108] *See* Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (approval of File No. SR–CBOE–2005–60, CBOE's proposal to adopt AIM, which included a random time period of three to five seconds for exposure of orders entered into that mechanism). *See also* Securities Exchange Act Release No. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (approval of File No. SR–CBOE–2008–16, which eliminated the random time period and established an exposure period of one second).

[109] *See* ISE Rule 723(c)(5)(i). *See also* Securities Exchange Act Release No. 68849 (February 6, 2013), 78 FR 9973 (February 12, 2013) (approval of File No. SR–ISE–2012–100, ISE's proposal to adopt a 500 millisecond response period).

[110] Rule 971.1NY(b)(1)(B), which relates to CUBE Auctions for fewer than 50 contracts, and Rule 971.1NY(b)(8), which states that the minimum size for a CUBE Auction would be one contract. *See also* BOX Rule 7150, IM–7150–1, CBOE Rule 6.74A, Interpretations and Policies .03, ISE Rule 723, Supplementary Material .03, and Phlx Rule 1080(n)(i)(C) (establishing pilot programs regarding the no minimum size requirement for orders entered into price improvement auctions).

[111] *See supra* notes 94–95 and accompanying text.

[112] 15 U.S.C. 78k(a)(1).

[113] 17 CFR 240.11a2–2(T).

[114] *Id.*

performing the execution;[115] and (4) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. The Exchange believes that orders sent by off-floor ATP Holders, for covered accounts, to the proposed CUBE Auction would qualify for this ''effect versus execute'' exception.

Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as MKT's CUBE Auction, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the Exchange.[116] The Exchange represents that the design of the CUBE Auction ensures that ATP Holders do not have any special or unique trading advantages in the handling of their orders after transmission. Based on the Exchange's representations, the Commission believes that the CUBE Auction's rules satisfy this requirement.

Second, Rule 11a2–2(T) requires orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that orders for covered accounts sent to the CUBE Auction from off-floor ATP Holders will be transmitted from remote terminals directly to the CUBE Auction by electronic means. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[117] With respect to such orders transmitted electronically from remote terminals directly to the CUBE Auction, the Commission believes that the CUBE Auction's rules satisfy the off-floor transmission requirement.[118] The Commission believes that, based on the foregoing, the proposal satisfies the off-floor transmission requirement for the purposes of ''effect versus execute'' rule.

Third, Rule 11a2–2(T) requires that the member not participate in the execution of its order once it has been transmitted to the member performing the execution. The Exchange represents that, upon submission to the CUBE Auction, an order will be executed automatically pursuant to the proposed rules set forth for the Auction. The Exchange states that, in particular, execution of an order sent to the Auction depends not on the ATP Holder entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is an ATP Holder able to acquire control or influence over the result or timing of order execution.[119] Accordingly, the Commission believes that an ATP Holder does not participate in the execution of an order submitted into the CUBE Auction. Based on the Exchange's representations, the Commission believes that the proposal satisfies the non-participation requirement of Rule 11a2–2(T).

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[120] The Exchange recognizes that ATP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition to rely on the Rule's exception. The Exchange represents that it will enforce this requirement pursuant to its obligation under Section 6(b)(1) of the Act to enforce compliance with the federal securities laws.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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–NYSEMKT–2014–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–17. This file number should be included on the subject line if email is used. To help the Commission process and review your

[115] The member may, however, participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the Designated Order Turnaround System of the New York Stock Exchange (''1978 Release'')).

[116] In considering the operation of automated execution systems operated by an exchange, the Commission has noted that, while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange's Post Execution Reporting System and Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System (''1979 Release'')).

[117] *See, e.g.,* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving, among other things, the equity rules of the Boston Stock Exchange (''BSE'')); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving rules governing the trading of options on The NASDAQ Options Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (approving the Boston Options Exchange as an options trading facility of BSE); the 1979 Release; and the 1978 Release.

[118] The Exchange further represents that there may be instances of orders for a covered account that may be sent by an off-floor ATP Holder to an unaffiliated Floor Broker for entry into the CUBE Auction mechanism. The Exchange represents that at the current time, Exchange-sponsored Floor Broker systems are not enabled to accept orders into the CUBE Auction mechanism from Floor Brokers. The Exchange further represents that, if a Floor Broker were to gain access to the CUBE Auction mechanism via a third-party system, that Floor Broker may not rely on any exceptions found in Section 11(a) of the Act or rules thereunder to enter orders for their own covered accounts into the Auction mechanism from on the floor, or transmit such orders from on the floor to off of the floor for entry into the CUBE Auction mechanism. *See* Amendment No. 2, *supra* note 4.

[119] The Exchange represents that the Initiating Participant may not cancel or modify a CUBE Order once a CUBE Auction has started. *See* proposed Rule 971.1NY(c).

[120] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2014–17 and should be submitted on or before May 22, 2014.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 2, prior to the 30th day after the date of publication of notice in the **Federal Register**. Amendment No. 2: (1) Clarified that Exchange-sponsored Floor Broker systems are not enabled to accept orders into the CUBE Auction mechanism from Floor Brokers; (2) revised the rule text to clarify that unrelated quotes and orders will never trade through their limit prices; and (3) revised the rule text to clarify that the Contra Order may not be cancelled or modified. As to the first item, Amendment No. 2 provides additional clarity in the discussion concerning the analysis of the original proposal's compliance with the requirements of Section 11(a) of the Act. As to the second item, Amendment No. 2 merely clarifies the rule text. As to the third item, Amendment No. 2 merely conforms the rule text to the description of the limitation in the Notice. The CUBE Auction will function in a manner substantially similar to that described in the Notice and Amendment No. 2 simply provides additional clarity regarding a few features of the proposal.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[121] that the proposed rule change, as modified by Amendment No. 2 (SR–NYSEMKT–2014–17) is approved on an accelerated basis, except that (1) paragraphs (b)(1)(B) and (b)(8) of Rule 971.1NY are approved on a pilot basis until April 25, 2015; and (2) there shall be no minimum size requirements for orders entered into the CUBE Auction for a pilot period expiring on April 25, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[122]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09921 Filed 4–30–14; 8:45 am]

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[121] 15 U.S.C. 78s(b)(2).

[122] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72028; File No. SR–NYSEArca–2014–42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of Schwab Active Short Duration Income ETF; Schwab TargetDuration 2-Month ETF; Schwab TargetDuration 9-Month ETF; and Schwab TargetDuration 12-Month ETF Under NYSEArca Equities Rule 8.600

April 25, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 14, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares [4] on the Exchange: Schwab Active Short Duration Income ETF; Schwab TargetDuration 2-Month ETF; Schwab TargetDuration 9-Month ETF; and Schwab TargetDuration 12-Month ETF (each a ''Fund'' and collectively, the ''Funds''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares [5] on the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

Exchange: Schwab Active Short Duration Income ETF; Schwab TargetDuration 2-Month ETF; Schwab TargetDuration 9-Month ETF; and Schwab TargetDuration 12-Month ETF (each a ''Fund'' and collectively, the ''Funds'').[6]

Each Fund is a series of the Schwab Strategic Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[7] Each Fund will be advised by Charles Schwab Investment Management, Inc. (''CSIM'' or the ''Adviser'').

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[8] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. CSIM is not a broker-dealer but is affiliated with a broker-dealer, Charles Schwab & Co., Inc., and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios. In the event (a) the Adviser becomes a registered broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios.

Schwab Active Short Duration Income ETF[9]

Principal Investments

According to the Short Duration Registration Statement, the investment objective of the Fund is to seek a high level of current income consistent with preservation of capital and daily liquidity.

To pursue its goal, it is the Fund's policy, under normal circumstances,[10] to invest at least 90% of its net assets[11] in a portfolio of investment grade short-term fixed income securities issued by U.S. and foreign issuers and other short-term investments, as described below. The short-term fixed income securities in which the Fund may invest include corporate and commercial debt instruments;[12] privately-issued securities;[13] mortgage-backed and asset-backed securities;[14] variable- and floating-rate fixed income securities; repurchase agreements;[15] money market

[6] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[7] The Trust is registered under the 1940 Act. On November 21, 2012, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Schwab Active Short Duration Income ETF (File Nos. 333–160595 and 811–22311) (the ''Short Duration Registration Statement''). In addition, on August 1, 2013, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act and the 1940 Act for the Schwab TargetDuration 2-Month ETF; Schwab TargetDuration 9-Month ETF; and Schwab TargetDuration 12-Month ETF (File Nos. 333–160595 and 811–22311) (the ''TargetDuration Registration Statement'' and, together with the Short Duration Registration Statement, the ''Registration Statements''). The description of the operation of the Trust and each Fund herein is based, in part, on the Registration Statements. In addition, the Commission has issued an order granting certain exemptive relief to the Adviser (as defined herein) under the 1940 Act. *See* Investment Company Act Release No. 30606 (July 23, 2013) (File No. 812–14009) (''Exemptive Order''). Each Fund will be offered in reliance upon the Exemptive Order issued to the Adviser.

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The Adviser represents that the name of the Fund will be changed to the Schwab TargetDuration 6-Month ETF prior to commencement of listing and trading of Shares of the Fund on the Exchange. Such change will be reflected in an amendment to the Short Duration Registration Statement.

[10] With respect to each of the Funds, the term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; events or circumstances causing a disruption in market liquidity or orderly markets; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[11] Each Fund's 90% investment policy may be satisfied by the investments outlined in a Fund's ''Principal Investments'' section. Certain ''Non-Principal Investments'' of each Fund, as discussed below, may also be considered within a Fund's 90% investment policy to the extent they are investment grade short-term fixed income securities. *See* note 58.

[12] The Adviser expects that under normal market circumstances, each Fund will generally seek to invest in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries.

[13] Privately-issued securities are generally issued under Rule 144A of the Securities Act.

[14] Each Fund's investments in each of the following security types will be limited to 10% of a Fund's net assets: (1) Non-agency residential mortgage-backed securities, (2) non-agency commercial mortgage-backed securities and (3) non-agency asset-backed securities. Each Fund's aggregate investments in the following security types will be limited to 20% of a Fund's net assets: (1) Non-agency residential mortgage-backed securities, (2) non-agency commercial mortgage-backed securities, and (3) non-agency asset-backed securities. As noted for each Fund, at least 90% of a Fund's net assets will be, under normal circumstances, invested in U.S. dollar denominated fixed income securities. All fixed income securities, including mortgage-backed and asset-backed securities, purchased by a Fund will be rated A – or higher. Neither high-yield asset-backed securities nor high-yield mortgage-backed securities are included in a Fund's principal investment strategies. The liquidity of a security, especially in the case of asset-backed and mortgage-backed debt securities, is a factor in each Fund's security selection process. Asset-backed securities backed by a specific industry receivable are classified into distinct industries based on the underlying credit and liquidity structures. Asset-backed commercial paper programs backed by multiple industry receivables are classified within a multi-industry category. Each Fund will limit investments in each identified industry individually and to the multi-industry category to less than 25% of its net assets.

[15] Repurchase agreements are instruments under which a buyer acquires ownership of certain securities (usually U.S. government securities) from a seller who agrees to repurchase the securities at a mutually agreed-upon time and price, thereby determining the yield during the buyer's holding period. The period to maturity for repurchase agreements is generally short (from overnight to one week), although it may be longer. In addition, the securities collateralizing a repurchase agreement may have longer maturity periods.

instruments, including, but not limited to certificates of deposit, commercial paper, promissory notes and asset-backed commercial paper; obligations issued by the U.S. government and its agencies and instrumentalities, including but not limited to, obligations that are not guaranteed by the U.S. Treasury, such as those issued by Fannie Mae and Freddie Mac; and bank notes and similar demand deposits. To gain exposure to short-term fixed income securities, the Fund may invest in other short-term investments including (1) money market funds (including funds that are managed by the Adviser or one of its affiliates), (2) other investment companies,[16] including exchange-traded funds (''ETFs''),[17] that invest in securities similar to those in which the Fund may invest directly, and (3) cash and cash equivalents. All of these investments will be denominated in U.S. dollars, including those that are issued by foreign issuers.

All fixed income securities purchased by the Fund will be rated A− or higher by Standard & Poor's Corporation (''S&P'') and/or an equivalent rating by another Nationally Recognized Statistical Rating Organization (''NRSRO'') such as Fitch Inc. (''Fitch'') or Moody's Investor Services, Inc. (''Moody's''), or, if unrated, determined by the Adviser to be of equivalent quality.[18]

Under normal circumstances, the Fund will generally maintain a portfolio duration of less than six months.[19] The Adviser may adjust the Fund's duration within the stated limit based on current or anticipated changes in interest rates.

Additionally, under normal circumstances, the Fund generally expects to maintain a portfolio maturity (which is the weighted average maturity of all the securities held in the portfolio) of less than twelve months (1 year). For most security types, the security's final maturity date (the date on which the final principal payment of the security is scheduled to be paid) will be used to determine the Fund's portfolio maturity.[20] The Fund will not purchase any security with a maturity, or for securitized investments, the security's weighted average life, of more than twenty-four months (2 years) from the date of acquisition. The Adviser may adjust the Fund's maturity within the stated limit based on current and anticipated changes in interest rates.

The Fund is an actively-managed fund that does not seek to track the performance of a specific index. The Exchange notes, however, that the Fund's portfolio, under normal circumstances, will meet certain criteria similar to those applicable to index-based, fixed income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.[21]

Schwab TargetDuration 2-Month ETF Principal Investments

According to the TargetDuration Registration Statement, the investment objective of the Fund is to seek current income consistent with preservation of capital and daily liquidity.

To pursue its goal, it is the Fund's policy, under normal circumstances,[22] to invest at least 90% of its net assets[23] in a portfolio of investment grade short-term fixed income securities issued by U.S. and foreign issuers and other short-term investments. The fixed income securities in which the Fund may invest include corporate and commercial debt instruments;[24] privately-issued securities;[25] mortgage-backed and asset-backed securities;[26] variable- and floating-rate fixed income securities; repurchase agreements;[27] money market instruments, including, but not limited to certificates of deposit, commercial paper, promissory notes and asset-backed commercial paper; obligations issued by the U.S. government and its agencies and instrumentalities, including but not limited to, obligations that are not guaranteed by the U.S. Treasury, such as those issued by Fannie Mae and Freddie Mac; and bank notes and similar demand deposits. To gain exposure to short-term fixed income securities, the Fund may invest in other short-term investments including (1) money market funds (including funds that are managed by the Adviser or one of its affiliates), (2) other investment companies,[28] including ETFs,[29] that invest in securities similar to those in which the Fund may invest directly, and (3) cash and cash equivalents. All of these investments will be denominated in U.S. dollars, including those that are issued by foreign issuers.

All fixed income securities purchased by the Fund will be rated A- or higher by S&P and/or an equivalent rating by another NRSRO such as Fitch or Moody's, or, if unrated, determined by the Adviser to be of equivalent quality.[30]

Under normal circumstances, the Fund will generally maintain a portfolio duration of less than two months.[31] The Adviser may adjust the Fund's duration within the stated limit based on current

[16] Each Fund may invest in other investment companies to the extent permitted by Section 12(d)(1) of the 1940 Act and rules thereunder and/or any applicable exemption under the 1940 Act with respect to such investments.

[17] For purposes of this proposed rule change, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges. While each Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X or 3X) or leveraged inverse ETFs.

[18] In determining whether a security is of ''equivalent quality,'' the Adviser may consider various factors, including but not limited to: Whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; and other structural analysis.

[19] Duration measures the price sensitivity of a security to interest rate changes. The longer the duration, the more sensitive the portfolio will be to a change in interest rates.

[20] For securitized investments such as asset-backed and mortgage-backed securities, the security's weighted average life (the weighted average time to receipt of all principal payments) will be used to determine a Fund's portfolio maturity while for securities with embedded demand features, such as puts or calls, either the security's demand date or the final maturity date, depending on interest rates, yields and other market conditions, will be used.

[21] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 governing fixed income based Investment Company Units. Under normal circumstances, each Fund's portfolio will meet the following criteria: (i) Components that in the aggregate account for at least 65% of the weight of the index or portfolio must each have a minimum original principal amount outstanding of $100 million or more (in contrast to the requirement in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(3) that 75% of the weight of the index or portfolio meet such requirement); (ii) no component fixed-income security (excluding Treasury Securities, government-sponsored entity and other exempted securities) will represent more than 30% of the weight of the portfolio, and the five highest weighted component fixed income securities (excluding Treasury Securities, government-sponsored entity and other exempted securities) will not in the aggregate account for more than 65% of the weight of the portfolio); and (iii) the portfolio (excluding Treasury Securities, government-sponsored entity and other exempted securities) will include securities from a minimum of 13 non-affiliated issuers. Each Fund will not be required to meet the requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(a)(3) (which relates to convertible security index components and removal of such components from an index or portfolio once the convertible security converts to the underlying security), and Commentary .02(a)(6) (which relates to reporting, numerical, or other enumerated requirements applicable to issuers of index component securities).

[22] *See* note 10, *supra.*

[23] *See* note 11, *supra.*

[24] *See* note 12, *supra.*

[25] *See* note 13, *supra.*

[26] *See* note 14, *supra.*

[27] *See* note 15, *supra.*

[28] *See* note 16, *supra.*

[29] *See* note 17, *supra.*

[30] *See* note 18, *supra.*

[31] *See* note 19, *supra.*

and anticipated changes in interest rates.

Additionally, under normal circumstances, the Fund generally expects to maintain a portfolio maturity (which is the weighted average maturity of all the securities held in the portfolio) of less than four months. For most security types, the security's final maturity date (the date on which the final principal payment of the security is scheduled to be paid) will be used to determine the Fund's portfolio maturity.[32] The Fund will not purchase any security with a maturity, or for securitized investments, the security's weighted average life, of more than eighteen months (1.5 years) from the date of acquisition. The Adviser may adjust the Fund's maturity within the stated limit based on current and anticipated changes in interest rates.

The Fund is an actively-managed fund that does not seek to track the performance of a specific index. The Exchange notes, however, that the Fund's portfolio, under normal circumstances, will meet certain criteria similar to those applicable to index-based, fixed income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.[33]

Schwab TargetDuration 9-Month ETF

Principal Investments

According to the TargetDuration Registration Statement, the investment objective of the Fund is to seek a high level of current income consistent with preservation of capital.

To pursue its goal, it is the Fund's policy, under normal circumstances,[34] to invest at least 90% of its net assets [35] in a portfolio of investment grade short-term fixed income securities issued by U.S. and foreign issuers and other short-term investments. The fixed income securities in which the Fund may invest include corporate and commercial debt instruments; [36] privately-issued securities; [37] mortgage-backed and asset-backed securities; [38] variable- and floating-rate fixed income securities; repurchase agreements,[39] money market instruments, including, but not limited to certificates of deposit, commercial paper, promissory notes and asset-backed commercial paper; obligations issued by the U.S. government and its agencies and instrumentalities, including but not limited to, obligations that are not guaranteed by the U.S. Treasury, such as those issued by Fannie Mae and Freddie Mac; and bank notes and similar demand deposits. To gain exposure to short-term fixed income securities, the Fund may invest in other short-term investments including (1) money market funds (including funds that are managed by the Adviser or one of its affiliates), (2) other investment companies,[40] including ETFs,[41] that invest in securities similar to those in which the Fund may invest directly, and (3) cash and cash equivalents. All of these investments will be denominated in U.S. dollars, including those that are issued by foreign issuers.

All fixed income securities purchased by the Fund will be rated A- or higher by S&P and/or an equivalent rating by another NRSRO such as Fitch or Moody's, or, if unrated, determined by the Adviser to be of equivalent quality.[42]

Under normal circumstances, the Fund will generally maintain a portfolio duration of less than nine months.[43] The Adviser may adjust the Fund's duration within the stated limit based on current and anticipated changes in interest rates.

Additionally, under normal circumstances, the Fund generally expects to maintain a portfolio maturity (which is the weighted average maturity of all the securities held in the portfolio) of less than eighteen months (1.5 years). For most security types, the security's final maturity date (the date on which the final principal payment of the security is scheduled to be paid) will be used to determine the Fund's portfolio maturity.[44] The Fund will not purchase any security with a maturity, or for securitized investments, the security's weighted average life, of more than thirty months (2.5 years) from the date of acquisition. The Adviser may adjust the Fund's maturity within the stated limit based on current and anticipated changes in interest rates.

The Fund is an actively-managed fund that does not seek to track the performance of a specific index. The Exchange notes, however, that the Fund's portfolio, under normal circumstances, will meet certain criteria similar to those applicable to index-based, fixed income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.[45]

Schwab TargetDuration 12-Month ETF

Principal Investments

According to the TargetDuration Registration Statement, the investment objective of the Fund is to seek maximum current income consistent with preservation of capital.

To pursue its goal, it is the Fund's policy, under normal circumstances,[46] to invest at least 90% of its net assets [47] in a portfolio of investment grade short-term fixed income securities issued by U.S. and foreign issuers and other short-term investments. The fixed income securities in which the Fund may invest include corporate and commercial debt instruments; [48] privately-issued securities,[49] mortgage-backed and asset-backed securities; [50] variable- and floating-rate fixed income securities; repurchase agreements; [51] money market instruments, including, but not limited to certificates of deposit, commercial paper, promissory notes and asset-backed commercial paper; obligations issued by the U.S. government and its agencies and instrumentalities, including but not limited to, obligations that are not guaranteed by the U.S. Treasury, such as those issued by Fannie Mae and Freddie Mac; and bank notes and similar demand deposits. To gain exposure to short-term fixed income securities, the Fund may invest in other short-term investments including (1) money market funds (including funds that are managed by the Adviser or one of its affiliates), (2) other investment companies,[52] including ETFs,[53] that invest in securities similar to those in which the Fund may invest directly, and (3) cash and cash equivalents. All of these investments will be denominated in U.S. dollars, including those that are issued by foreign issuers.

All fixed income securities purchased by the Fund will be rated A- or higher by S&P and/or an equivalent rating by another NRSRO such as Fitch or Moody's, or, if unrated, determined by the Adviser to be of equivalent quality.[54]

Under normal circumstances, the Fund will generally maintain a portfolio

[32] *See* note 20, *supra.*
[33] *See* note 21, *supra.*
[34] *See* note 10, *supra.*
[35] *See* note 11, *supra.*
[36] *See* note 12, *supra.*
[37] *See* note 13, *supra.*
[38] *See* note 14, *supra.*
[39] *See* note 15, *supra.*
[40] *See* note 16, *supra.*
[41] *See* note 17, *supra.*
[42] *See* note 18, *supra.*
[43] *See* note 19, *supra.*
[44] *See* note 20, *supra.*
[45] *See* note 21, *supra.*
[46] *See* note 10, *supra.*
[47] *See* note 11, *supra.*
[48] *See* note 12, *supra.*
[49] *See* note 13, *supra.*
[50] *See* note 14, *supra.*
[51] *See* note 15, *supra.*
[52] *See* note 16, *supra.*
[53] *See* note 17, *supra.*
[54] *See* note 18, *supra.*

duration of less than twelve months (1 year).[55] The Adviser may adjust the Fund's duration within the stated limit based on current and anticipated changes in interest rates.

Additionally, under normal circumstances, the Fund generally expects to maintain a portfolio maturity (which is the weighted average maturity of all the securities held in the portfolio) of less than twenty-four months (2 years). For most security types, the security's final maturity date (the date on which the final principal payment of the security is scheduled to be paid) will be used to determine the Fund's portfolio maturity.[56] The Fund will not purchase any security with a maturity, or for securitized investments, the security's weighted average life, of more than thirty-six months (3 years) from the date of acquisition. The Adviser may adjust the Fund's maturity within the stated limit based on current and anticipated changes in interest rates.

The Fund is an actively-managed fund that does not seek to track the performance of a specific index. The Exchange notes, however, that the Fund's portfolio, under normal circumstances, will meet certain criteria similar to those applicable to index-based, fixed income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.[57]

Non-Principal Investments [58]

According to the Registration Statements, as part of each Fund's non-principal investment strategies, a Fund may invest in other securities such as Build America Bonds,[59] capital and trust preferred securities,[60] fixed income securities with put features, sinking funds [61] and zero-coupon, step-coupon, and pay-in-kind securities.[62] Also as part of each Fund's non-principal investment strategies, a Fund may borrow money in accordance with the 1940 Act as outlined in a Fund's Registration Statement.

A Fund may not hold more than 15% of its net assets in illiquid assets, including Rule 144A securities [63] except for Rule 144A securities deemed liquid by the Adviser, based on criteria for liquidity established by the Board, consistent with Commission guidance.[64] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[65]

Furthermore, a Fund may not concentrate investments in a particular industry or group of industries, as concentration is defined under the 1940 Act, the rules or regulations thereunder or any exemption therefrom, as such statute, rules or regulations may be amended or interpreted from time to time.[66]

Each Fund will not invest in options, futures, swaps or other derivatives or in non-U.S. equity securities. A Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Creation and Redemption of Shares

Each Fund will issue and redeem the Shares only in ''Creation Units,'' which shall be aggregations of at least 25,000 Shares or more. Only institutional investors, who have entered into an authorized participant agreement (known as ''Authorized Participants''), may purchase or redeem Creation Units of a Fund as set forth in the Registration Statements. Creation Units will generally be issued and redeemed in exchange for a specified basket of securities approximating the holdings of a Fund (''Deposit Securities'') and a designated amount of cash denominated in U.S. Dollars (the ''Cash Component''). Together, the Deposit Securities and the Cash Component constitute the ''Fund

[55] *See* note 19, *supra.*

[56] *See* note 20, *supra.*

[57] *See* note 21, *supra.*

[58] Certain investments have been identified as ''Non-Principal Investments'' within the Registration Statements given the limited extent to which these investments are expected to comprise of [sic] each Fund's portfolio. These non-principal investments, however, may be considered within a Fund's 90% investment policy to the extent they are investment grade short-term fixed income securities.

[59] According to the Registration Statements, Build America Bonds offer an alternative form of financing to state and local governments whose primary means for accessing the capital markets has historically been through the issuance of tax-free municipal bonds. Issuance of Build America Bonds ceased on December 31, 2010. Outstanding Build America Bonds will continue to be eligible for the federal interest rate subsidy, which continues for the life of the bonds.

[60] According to the Registration Statements, capital securities are certain subordinated securities and generally rank senior to common stock and preferred stock in an issuer's capital structure, but have a lower security claim than the issuer's corporate bonds. Trust preferred securities have the characteristics similar to other capital securities. They are issued by a special purpose trust subsidiary backed by subordinated debt of the corporate parent.

[61] According to the Registration Statements, sinking funds are generally established by bond issuers to set aside a certain amount of money to cover timely repayment of bondholders' principal raised through a bond issuance. By creating a sinking fund, the issuer is able to spread repayment of principal to numerous bondholders while reducing reliance on its then current cash flows. A sinking fund also may allow the issuer to annually repurchase certain of its outstanding bonds from the open market or repurchase certain of its bonds at a call price named in a bond's sinking fund provision. This call provision allows bonds to be prepaid or called prior to a bond's maturity.

[62] According to the Registration Statements, zero-coupon, step-coupon, and pay-in-kind securities are fixed income securities that do not make regular cash interest payments throughout the period prior to maturity. Zero-coupon and step-coupon securities are sold at a deep discount to their face value. A zero-coupon security pays no interest to its holders during its life. Step-coupon securities are debt securities that, instead of having a fixed coupon for the life of the security, have coupon or interest payments that may increase or decrease to predetermined rates at future dates. Pay-in-kind securities pay interest through the issuance of additional securities. To continue to qualify as a ''regulated investment company'' or ''RIC'' under the Internal Revenue Code of 1986, as amended, and avoid a certain excise tax, each Fund may be required to distribute a portion of such discount and income and may be required to dispose of other portfolio securities, which may occur in periods of adverse market prices, in order to generate cash to meet these distribution requirements.

[63] Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A of the Securities Act.

[64] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[65] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[66] According to the Registration Statements, the Commission has defined concentration as investing 25% or more of an investment company's total assets in an industry or group of industries, with certain exceptions such as with respect to investments in obligations issued or guaranteed by the U.S. Government or its agencies and instrumentalities, or tax-exempt obligations of state or municipal governments and their political subdivisions. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

Deposit,'' which will represent the minimum initial and subsequent investment amount for a Creation Unit of a Fund.

According to the Registration Statements, a Fund may accept a basket of money market instruments, non-U.S. currency or cash denominated in U.S. dollars that differs from the composition of the published basket. A Fund may permit or require the consideration for Creation Units to consist solely of cash or non-U.S. currency. A Fund may permit or require the substitution of an amount of cash denominated in U.S. Dollars (*i.e.,* a ''cash in lieu'' amount) to be added to the Cash Component to replace any Deposit Security.

The identity and amount of Deposit Securities and Cash Component for a Fund may change as the composition of the Fund's portfolio changes and as rebalancing adjustments and corporate action events are reflected from time to time by CSIM with a view to the investment objective of a Fund.

Shares of each Fund may be redeemed only in Creation Units at their net asset value (''NAV'') and only on a day the NYSE Arca is open for business (normally from 9:30 a.m. until 4:00 p.m. Eastern time, each a ''Business Day''). According to the Registration Statements, Fund securities received on redemption will generally correspond pro rata, to the extent practicable, to the securities in a Fund's portfolio. Fund securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Net Asset Value

According to the Registration Statements, each Fund will calculate its NAV at the close of the regular trading session of each Business Day using the values of the respective Fund's portfolio securities.

In valuing their securities, each Fund will use market quotes or official closing prices if they are readily available. In cases where quotes are not readily available, a Fund may value securities based on fair values developed using methods approved by the Funds' Board of Trustees (as discussed below). When valuing fixed income securities with remaining maturities of more than 60 days, each Fund will use the value of the security provided by independent pricing services. The pricing services may value fixed income securities at an evaluated price by employing methodologies that use actual market transactions, broker-supplied valuations, or other methodologies designed to identify the market value for such securities. When valuing fixed income securities with remaining maturities of 60 days or less, each Fund may use the security's amortized cost, which approximates the security's market value.

Corporate and commercial debt instruments; privately-issued securities; mortgage-backed and asset-backed securities; variable- and floating-rate fixed income securities; repurchase agreements; money market instruments; obligations issued by the U.S. government and its agencies and instrumentalities; bank notes and similar demand deposits; Build America Bonds; fixed income securities with put features; sinking funds; over-the-counter capital and trust preferred securities; and step-coupons will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Any such third-party pricing service may use a variety of methodologies to value some or all of a Fund's debt securities to determine the market price. For example, the prices of securities with characteristics similar to those held by each Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. A Fund's debt securities may be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. Short-term securities for which market quotations are not readily available will be valued at amortized cost, which approximates market value. ETFs and exchange-traded capital and trust preferred securities will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation. Investment company securities, including money market funds, (other than ETFs) will be valued at NAV.

When market prices for securities are not ''readily available'' or are unreliable, the securities will be valued at fair value. For example, a Fund may fair value a security when a security is de-listed or its trading is halted or suspended; when a security's primary pricing source is unable or unwilling to provide a price; when a security's primary trading market is closed during regular market hours; or when a security's value is materially affected by events occurring after the close of the security's primary trading market. By fair valuing securities whose prices may have been affected by events occurring after the close of trading, each Fund will seek to establish prices that investors might expect to realize upon the current sales of these securities. Each Fund's fair value methodologies seek to ensure that the prices at which each Fund's Shares are purchased and redeemed are fair and do not result in dilution of shareholder interest or other harm to shareholders. Generally, when fair valuing a security, a Fund will take into account all reasonably available information that may be relevant to a particular valuation including, but not limited to, fundamental analytical data regarding the issuer, information relating to the issuer's business, recent trades or offers of the security, general and specific market conditions and the specific facts giving rise to the need to fair value the security. Each Fund will make fair value determinations in good faith and in accordance with the fair value methodologies included in the Board of Trustees' adopted valuation procedures and in accordance with the 1940 Act.

Portfolio Indicative Value

The Portfolio Indicative Value (''PIV'') as defined in NYSE Arca Equities Rule 8.600(c)(3) of Shares of each Fund will be widely disseminated by one or more major market data vendors at least every fifteen seconds during the Exchange's Core Trading Session. Such approximate value generally will be determined by using current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities held by a Fund. This approximate value should not be viewed as a ''real-time'' update of the NAV per Share of a Fund because the approximate value may not be calculated in the same manner as the NAV, which is computed once a day, generally at the end of the Business Day. The PIV will be based upon the current value for the components of a Fund's Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2).

Availability of Information

The Funds' Web site (*www.schwabetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded (*www.schwabetfs.com/prospectus*). The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the

''Bid/Ask Price''),[67] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on each Fund's Web site the Disclosed Portfolio for each Fund as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for a Fund's calculation of NAV at the end of the Business Day.[68]

Each Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

On a daily basis, the Adviser will disclose on behalf of each Fund [sic] each portfolio security and other financial instrument of each Fund the following information: Ticker symbol (if applicable), name of security and financial instrument, number of shares, if applicable, and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge. In addition, intra-day and end-of-day prices for all securities and other financial instruments held by each Fund will be available through major market data vendors or broker-dealers or on the exchanges on which they are traded.

In addition, a basket composition file disclosing each Fund's Securities [sic], which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The basket represents one Creation Unit of a Fund. Investors can also obtain the Trust's Statement of Additional Information (''SAI''), each Fund's Shareholder Report, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information for the Shares regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers or available via the respective newspapers' Web sites and other such sources. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. Intra-day and closing price information regarding corporate and commercial debt instruments; privately-issued securities; mortgage-backed and asset-backed securities; variable- and floating-rate fixed income securities; repurchase agreements; money market instruments; obligations issued by the U.S. government and its agencies and instrumentalities; bank notes and similar demand deposits; Build America Bonds; fixed income securities with put features; sinking funds; capital and trust preferred securities; and step-coupons will be available from major market data vendors. Price information for ETFs and exchange-traded capital and trust preferred securities will be available from the applicable exchange or major market data vendors. Price information for other investment company securities (including money market funds) will be available from major market data vendors. In addition, as noted above, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[69] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares of each Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statements.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[70] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of a Fund inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 [71] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV and

[67] The Bid/Ask Price of a Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

[68] Under accounting procedures to be followed by each Fund, trades made on the prior Business Day (''T'') generally will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, each Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[69] Currently, it is the Exchange's understanding that several major market data vendors widely disseminate PIVs taken from CTA or other data feeds.

[70] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[71] 17 CFR 240 10A–3.

the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares of each Fund will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[72] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETFs, exchange-traded capital and trust preferred securities, and other exchange-listed assets, as applicable, with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in such Shares, ETFs, exchange-traded capital and trust preferred securities, and other exchange-listed assets, as applicable, from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such Shares, ETFs, exchange-traded capital and trust preferred securities, and other exchange-listed assets, as applicable, from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[73] In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by each Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of each Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statements. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of each Fund will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[74] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Each Fund will not invest in non-U.S. equity securities. Each Fund will not invest in leveraged or leveraged inverse ETFs. A Fund's investments will be consistent with the Funds' investment objective and will not be used to enhance leverage. Each Fund will, under normal market circumstances, invest at least 90% of its net assets in a portfolio of investment grade short-term fixed income securities issued by U.S. and foreign issuers and other short-term investments as described above. All debt securities purchased by each Fund will be rated A− or higher by S&P and/or an equivalent rating by another NRSRO such as Fitch or Moody's, or, if unrated, determined by the Adviser to be of equivalent quality. Each Fund's investments in each of the following security types will be limited to 10% of a Fund's net assets: (1) Non-agency residential mortgage-backed securities, (2) non-agency commercial mortgage-backed securities and (3) non-agency asset-backed securities. Each Fund's aggregate investments in the following security types will be limited to 20% of a Fund's net assets: (1) Non-agency residential mortgage-backed securities, (2) non-agency commercial mortgage-backed securities, and (3) non-agency asset-backed securities. A Fund may not hold more than 15% of its net assets in illiquid assets, including Rule 144A securities except for Rule 144A securities deemed liquid by the Adviser, based on criteria for liquidity established by the Board, consistent with Commission guidance. The Adviser expects that under normal market circumstances, each Fund will generally seek to invest in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries. Each Fund will not invest in options, futures, swaps or other derivatives. Each Fund's portfolio, under normal circumstances, will meet certain criteria similar to those applicable to index-based, fixed income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.[75]

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares of each Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. Additionally, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETFs, exchange-traded capital and trust preferred

[72] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[73] For a list of the current members of ISG, see *www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[74] 15 U.S.C. 78f(b)(5).

[75] *See* note 21, *supra*.

securities, and other exchange-listed assets, as applicable, with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in such Shares, ETFs, exchange-traded capital and trust preferred securities, and other exchange-listed assets, as applicable, from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such Shares, ETFs, exchange-traded capital and trust preferred securities, and other exchange-listed securities, as applicable, from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's TRACE.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding each Fund and the respective Shares, thereby promoting market transparency. Each Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Intra-day and end-of-day prices for all securities or other financial instruments held by each Fund will be available through major market data vendors or broker-dealers or on the exchanges on which they are traded. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on the Funds' Web site the Disclosed Portfolio that will form the basis for each Fund's calculation of NAV at the end of the Business Day. Information regarding market price and trading volume of the Shares of each Fund will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares of each Fund. Trading in Shares of each Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of each Fund may be halted. In addition, as noted above, investors will have ready access to information regarding a Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the respective Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares of each Fund and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the PIV, the Disclosed Portfolio for each Fund, and quotation and last sale information for the Shares of each Fund.

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–42. 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–42 and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09924 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

[76] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72019; File No. SR–MSRB–2014–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of New Rule A–11, on Assessments for Municipal Advisor Professionals

April 25, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2014, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as changing fees imposed by the MSRB under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of new Rule A–11, on assessments for municipal advisor professionals (the ''proposed rule change'').

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2014-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB 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 proposed rule change consists of new Rule A–11, on assessments for municipal advisor professionals. In the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''),[4] Congress charged the SEC and MSRB with the regulation of municipal advisors. The Dodd-Frank Act specifically amended the Exchange Act to grant the MSRB authority to charge municipal advisors reasonable fees to defray the costs of the operation of the MSRB. The purpose of the proposed rule change is to assess a reasonable fee on municipal advisors to help defray the costs and expenses of operating and administering the MSRB, particularly the increased costs as a result of the regulation of municipal advisors. New Rule A–11 will charge each municipal advisor an annual fee of $300 for each Form MA–I on file with the SEC in the relevant year.[5] This fee is separate from the initial $100 and annual $500 registration fees the MSRB charges all market participants subject to MSRB regulation [6] and is a step towards the MSRB's goal to provide for assessments that are fairly and equitably apportioned among all such registrants.[7]

Section (a) of Rule A–11 establishes an annual municipal advisor professional fee. This section provides that, beginning with the MSRB's fiscal year 2015 (which begins October 1, 2014), each municipal advisor that is registered with the Commission will be required to pay a recurring annual fee of $300 for each Form MA–I filed with the Commission as of January 31 of the relevant year by the municipal advisor. Section (a) further provides that the professional fee will be due by April 30 of each year and will be payable in the manner provided by the MSRB Registration Manual.

Section (b) of Rule A–11 provides for a late fee for any municipal advisor that fails to pay timely in full any professional fee due under section (a) or (c) of the proposed rule. The total late fee will equal twenty-five dollars monthly for each $300 assessment not paid in full, plus a late fee on the total overdue balance based on the prime rate as provided for in the MSRB Registration Manual.

Section (c) of Rule A–11 provides for a transitional municipal advisor professional fee. This transitional fee takes account of the timing of the phased-in compliance period for the SEC's permanent registration process, which begins in the second half of calendar year 2014, and which entails the first filings of Forms MA–I by municipal advisors. Each municipal advisor registered, either temporarily or permanently, with the SEC on or before September 30, 2014 (the last day of the MSRB's fiscal year 2014), will be required to pay an assessment of $300 for each Form MA–I filed with the SEC by the municipal advisor in connection with its permanent registration. The transitional fee will be payable in the manner provided by the MSRB

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] *See* 17 CFR 240.15Ba1–2(b) (setting forth requirements to file Form MA–I with the SEC).

[6] *See* MSRB Rules A–12 and A–14. *See also* MSRB Notice 2014–05 (Feb. 27, 2014) (describing SEC-approved amendments to MSRB Rule A–12 and deletion of Rule A–14 to consolidate MSRB registration requirements in Rule A–12, which will become effective on May 12, 2014).

[7] On July 26, 2011, the MSRB filed a proposed rule change with the SEC that would have established an interim $300 per professional assessment of municipal advisors and would have required municipal advisors to complete a survey for the MSRB to use in establishing a permanent assessment for municipal advisor professionals. This filing was subsequently withdrawn due to the SEC's continuing consideration of the definition of the term ''municipal advisor'' under the Act. *See* MSRB Notice 2011–51 (Sept. 12, 2011).

Registration Manual. The transitional fee will only be assessed upon municipal advisors that are either temporarily or permanently registered on or before September 30, 2014, and will help defray in particular the costs of establishing a regulatory regime for municipal advisors. Owing to the timing of the SEC's phased-in compliance period, some municipal advisors will not pay this transitional fee until after the start of the MSRB's 2015 fiscal year. Although these municipal advisors will owe two assessments during the same MSRB fiscal year, the MSRB believes this timing of the transitional fee minimizes the administrative burden on municipal advisors by using the filing of Forms MA–I as the basis of the fee, rather than requiring an additional submission, analysis and categorization of professionals. Municipal advisors paying this transitional fee will then pay their first annual professional fee by April 30, 2015, according to Rule A–11(a).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act, which provides that the MSRB's rules shall

> provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.

In addition, Section 15B(b)(2)(L)(iv) of the Act requires that rules adopted by the MSRB

> not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The proposed rule change will establish a fee for municipal advisors that will help to defray the costs and expenses of operating and administering the MSRB, particularly the MSRB's regulatory and related activities in connection with municipal advisors. The total amount of the assessment payable by each municipal advisor will be dependent on the number of Forms MA–I filed by the municipal advisor and, therefore, will result in relatively lower assessments for smaller firms. Being based on the number of persons engaging in municipal advisory activities on behalf of a firm, the total fee will bear a reasonable relationship to the level of regulated municipal advisory activities that are undertaken by each firm. Single-person firms filing one Form MA–I will be charged only $300 annually under proposed Rule A–11.[8] The $300 fee will not be triggered by persons for whom the municipal advisor is not required by the SEC to file a Form MA–I, such as persons performing solely clerical, administrative, support or similar functions.[9] The MSRB believes that the reasonableness of the fee is also supported by its simplicity of calculation. Rather than establish a new category of professional for purposes of assessing this fee, which would have required additional analysis and compliance efforts, the fee leverages the existing categorization under the Commission's rules and the analysis by firms already required by those rules. The MSRB further believes, for all of these reasons, that the assessment will not impose an unnecessary or inappropriate regulatory burden on small municipal advisors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 since it would apply equally to all municipal advisors based on the number of Forms MA–I filed by each firm.

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 on the proposed rule change.

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 and paragraph (f) of Rule 19b–4 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.

[8] *See* 17 CFR 240.15Ba1–2(b)(2) (requiring a natural person applying for registration with the SEC as a municipal advisor to file a Form MA–I).

[9] *See* Exchange Act Release No. 70462, at p. 636 (Sept. 20, 2013), 78 FR 67468, 67655 (Nov. 12, 2013) (Glossary of Terms).

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–MSRB–2014–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2014–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2014–03 and should be submitted on or before May 22, 2014.

For the Commission, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09919 Filed 4–30–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72017; File No. SR–NYSEMKT–2014–33]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Governing Letters of Guarantee and Letters of Authorization

April 25, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 11, 2014, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Exchange rules governing Letters of Guarantee and Letters of Authorization. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As further described below, each ATP Holder acting as either a Market Maker or Floor Broker on NYSE Amex Options currently is required to submit to the Exchange a Letter of Guarantee or Letter of Authorization for its trading activities from a Clearing Member.[4] Typically, by a Letter of Guarantee, the Clearing Member accepts financial responsibility for all Exchange transactions made by a Market Maker[5] and, by a Letter of Authorization, a Clearing Member is responsible for the clearance of Exchange transactions of the Floor Broker on the Exchange.[6]

- The purpose of the proposal is to amend various Exchange rules governing Letters of Guarantee and Authorization to: Provide that any written notice of revocation of a Letter of Guarantee or Letter of Authorization will become effective upon processing by the Exchange.
- give the Exchange the ability to prevent access and connectivity if a Market Maker or Floor Broker is subject to written notice of revocation.

Changes to Rule 924NY(c)—Letters of Guarantee

Rule 924NY(c) states that a Letter of Guarantee filed with the Exchange shall remain in effect until a final written notice of revocation has been received by the Exchange. The current rule sets forth a time period for the effectiveness of a notice of revocation to take place. However the Exchange does not believe that a specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 924NY(c) to provide that notices of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Guarantee on the Chicago Board Options Exchange (''CBOE'').[7]

Once a notice of revocation has been processed, a Market Maker no longer has in effect a Letter of Guarantee, as required by Rule 924NY(a). If a Market Maker no longer has a valid Letter of Guarantee, that Market Maker presents risk to the marketplace and the Exchange believes it is appropriate to terminate access and connectivity to the Exchange in these situations. Accordingly, the Exchange proposes to further amend Rule 924NY(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Market Maker. Preventing access and connectivity by a Market Maker who does not have a valid Letter of Guarantee is consistent with similar procedures of the CBOE.[8]

Changes to Rule 932NY—Letters of Authorization

Rule 932NY(c) states that a Letter of Authorization filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange. The current rule sets forth a time period for the effectiveness of a revocation to take place. However the Exchange does not believe that a specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 932NY(c) to provide that a notice of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rules change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.[9]

Once a notice of revocation has been processed, a Floor Broker no longer has in effect a Letter of Authorization, as required by Rule 932NY(a). If a Floor Broker no longer has a valid Letter of Authorization, that Floor Broker presents risk to the marketplace and the Exchange believes it is appropriate to terminate access and connectivity to the Exchange in these situations. Accordingly, the Exchange proposes to further amend Rule 932NY(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Floor Broker. Preventing access and connectivity to a Floor Broker who does not have on file an effective Letter of Authorization is consistent with similar procedures of the CBOE.[10]

The Exchange also proposes to adopt an additional provision to Rule 932NY(c) stating that final revocation shall in no way relieve a Clearing

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Clearing Member is an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

[5] *See* Rule 924NY(b).

[6] *See* Rule 932NY(b).

[7] *See* CBOE Rule 8.5(c).

[8] *See* CBOE Rule 3.28(b).

[9] *See* CBOE Rule 6.72(c).

[10] *Supra* note 8.

Member of responsibility for clearing Floor Broker transactions that were executed prior to the effectiveness of such final revocation. The Exchange believes that this provision, which currently applies only to Market Makers who have been subject to notices of revocation, is equally appropriate in instances when a Floor Broker is subject to a notice of revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.[11]

The Exchange notes that nothing in existing or proposed rules would prohibit a Market Maker or Floor Broker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Preventing access and connectivity to the Exchange by a Market Maker or Floor Broker subject to a notice of revocation will promote just and equitable principles of trade and serves to protect investors and the public because it prevents trading by a Market Makers or Floor Broker without financial guarantees for its trading. A Market Maker or Floor Broker who no longer has a valid Letter of Guarantee or Letter of Authorization presents risk to the marketplace and the Exchange believes it is appropriate to prevent access and connectivity to the Exchange in these situations. In addition, making a notice of revocation effective upon processing by the Exchange, instead of being encumbered by a specified time frame, will permit the Exchange to act swiftly to take measures aimed at market integrity and investor protection.

The Exchange believes the proposed rule change is also consistent with the requirements that the rules of an exchange provide a fair procedure for the denial or limitation by an exchange of any person with respect to access to services offered by the Exchange because the Exchange would not prohibit or limit a Floor Broker or Market Maker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes will apply equally to all Floor Brokers and Market Makers and is designed to protect all ATP Holders and public investors effecting transactions on the Exchange. In addition, the proposed changes will not impose any unnecessary burden on the operation of the Exchange because the changes will allow the Exchange to adopt more efficient procedures for the processing notices of revocation.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to promptly adopt and implement new procedures aimed at market integrity and investor protection. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As such, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.[16]

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–33. 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

[11] *Supra* note 9.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C.78s(b)(3)(A)(iii).

[15] 15 CFR 240.19b–4(f)(6).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–33, and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09917 Filed 4–30–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72033; File No. SR–FINRA–2014–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA's Corporate Financing Rules To Simplify and Refine the Scope of the Rules

April 28, 2014.

On January 9, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change proposing to amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5121 (Public Offerings of Securities with Conflicts of Interest) in several respects in order to simplify and refine the scope of the rules. The proposed rule change was published for comment in the **Federal Register** on January 29, 2014.[3] The Commission received two comment letters on the proposal.[4] On April 16, 2014, FINRA responded to the comment letters.[5] On March 4, 2014, the Commission extended the time period for Commission action to April 28, 2014.[6] This order approves the proposed rule change.

I. Description of the Proposed Rule Change[7]

Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. Among other provisions, Rule 5110 requires members to file with FINRA information about the securities offerings in which they participate and to disclose affiliations and other relationships that may indicate the existence of conflicts of interest. FINRA is proposing amendments to Rule 5110 to: (1) Narrow the scope of the definition of ''participation or participating in a public offering;'' (2) modify the lock-up restrictions to exclude certain securities acquired or converted to prevent dilution; and (3) clarify that the information requirements apply only to relationships with a ''participating'' member. FINRA states that this change preserves the protections of the rule and will enable issuers to seek advice from a member that is not involved in the distribution or sale of the issuer's securities.

Participation in a Public Offering

Rule 5110(a)(5) defines ''participating in a public offering'' to include participation in ''any advisory or consulting capacity to the issuer related to the offering.'' FINRA proposes to amend Rule 5110(a)(5) to provide that an ''independent financial adviser'' that provides advisory or consulting services to the issuer would not meet the definition of ''participation in a public offering'' as defined in Rule 5110(a)(5) and would therefore not be subject to the compensation limitations of Rule 5110. The proposal defines an independent financial adviser as ''a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering.''

Lock-Up Restrictions

Rule 5110(d)(1) generally includes as underwriting compensation all items of value, which may include unregistered securities, that are acquired (or arranged to be acquired) within the 180 day period prior to the filing of the registration statement (''180-day review period''). Rule 5110(d)(5) (Exceptions from Underwriting Compensation) provides five exceptions that permit participating members to acquire securities of the issuer during the 180-day review period without the securities being deemed to be underwriting compensation, including excluding from underwriting compensation the receipt of additional securities to prevent dilution of the investor's investment (*e.g.,* securities acquired as a result of a stock-split or a pro-rata rights or similar offering) where such additional securities are received during the 180-day review period or subsequent to the filing of the public offering, but where the original securities were acquired before the 180-day review period or otherwise were not deemed by FINRA to be underwriting compensation, as described in Rule 5110(d)(5)(D).

While these acquisitions and conversions to prevent dilution are excepted from underwriting compensation, they currently continue to be subject to the lock-up restrictions of Rule 5110(g)(1). FINRA proposes to eliminate the lock-up restrictions for these securities in order to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period in a manner consistent with the treatment provided for the securities on which their acquisition or conversion was based.

Information Requirements

Subject to certain exceptions, Rule 5110(b)(6)(A)(iii) requires filers to disclose to FINRA information about the affiliation or association with any member of the officers, directors, and certain owners of the issuer. The compensation limitations and other provisions of Rule 5110 and Rule 5121 apply only to members that participate in a public offering. Correspondingly, FINRA is proposing to amend Rule 5110(b)(6)(A)(iii) to narrow the scope of this provision to require disclosure about the affiliation or association of the

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71372 (January 23, 2014), 79 FR 4793 (SR–FINRA–2014–003) (''Notice'').

[4] *See* Letter from Suzanne Rothwell (''Rothwell''), Managing Member, Rothwell Consulting LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 10, 2014 (''Rothwell Letter''); Letter from Sean Davy, Managing Director, Corporate Credits Market Division, Securities Industries and Financial Markets Association (''SIFMA''), to Elizabeth M. Murphy, Secretary, Commission, dated February 18, 2014 (''SIFMA Letter'').

[5] *See* Letter from Kathryn M. Moore, Associate General Counsel, FINRA, to Kevin O'Neill, Deputy Secretary, Commission, dated April 16, 2014 (''FINRA Letter'').

[6] *See* Securities Exchange Act Release No. 71642 (March 4, 2014), 79 FR 13364 (SR–FINRA–2014–003).

[7] A more detailed description of the proposal is contained in the Notice. *See supra* note 3.

specified parties with ''any participating member.''

Rule 5121—Definition of ''Control''

Under Rule 5121, the scope of the definition of ''control'' is considered in determining whether a member and an issuer are deemed to be affiliated [8] for purposes of the conflicts provisions of Rule 5121 [9] and for certain requirements to provide information to FINRA in Rule 5110. FINRA is proposing amendments to Rule 5121 to narrow the scope of the definition of ''control'' by eliminating Rule 5121(f)(6)(iii), thereby excluding from the definition of control the following: ''beneficial ownership of 10 percent or more of the outstanding subordinated debt of an entity, including any right to receive such subordinated debt within 60 days of the member's participation in the public offering.''

II. Discussion of Comments and FINRA's Response

On January 29, 2014, the Commission published in the **Federal Register** FINRA's proposed rule change to amend its corporate financing rules.[10] The Commission received the two comment letters listed above.[11] SIFMA stated that it fully supports the substance of the proposed rule change and further stated that it believed that the modifications will benefit all offering participants by reducing unnecessary costs and burdens, while continuing to preserve important investor protection standards.[12]

Generally speaking, Rothwell expressed support for the proposed rule change's modifications to Rules 5110 and 5121, with the exception of the carve out in Rule 5110(a)(5) for independent financial advisers (''Adviser Proposal'').[13] Rothwell stated that modifying Rule 5110(a)(5) to exempt independent financial advisers from the definition of ''participation'' would result in independent financial advisers also being exempt from the definition of ''underwriter and related persons'' found in Rule 5110(a)(6).[14] Rothwell stated that FINRA should clarify that the Adviser Proposal would operate to exclude an independent financial adviser from compliance with the provisions of Rule 5110, Rule 5121 and Rule 2310.[15]

Rothwell agreed with FINRA that a member-consultant that meets the definition of independent financial adviser is generally less able in comparison to the underwriters to negotiate an unfair arrangement with an issuer.[16] Rothwell states, however, that this belief is also rooted in FINRA's experience that those issuers that hire FINRA members to provide independent advice on a potential IPO are major companies with significant negotiating power and consequently are able to avoid unfair and unreasonable terms under Rule 5110.[17] But Rothwell believes in the case of medium or small-sized companies, the issuer may not have sufficient economic power to be dominant when negotiating arrangements with a consultant.[18] Consequently, Rothwell recommends that the Adviser Proposal be revised and applied to independent financial advisers, which recommendations are summarized briefly here.[19]

- Because an independent financial adviser would be excluded from the definition of ''participation,'' the underwriter would not be required under Rule 5110(b)(6) to file with FINRA information on the consulting agreement, any acquisitions of securities by the ''independent financial adviser'' within the 180-day review period, and any conflict of interest between the consultant and the issuer.[20] Rothwell recommends that independent financial advisers comply with the information filing requirements of Rule 5110(b)(6) or that the Adviser Proposal be revised to require that the information described above be filed with FINRA.[21]
- Rothwell also recommends that FINRA clarify whether it would exercise its historical authority under Rule 5110 to conclude that a consulting arrangement with an ''independent financial adviser'' is unfair and unreasonable, despite the availability of the exemption, in the limited circumstance where FINRA staff determine that the consulting arrangement does not conform to ''high standards of commercial honor and just and equitable principles of trade'' under FINRA Rule 2010.[22]
- Rothwell believes that potential investors should be provided information regarding the independent financial adviser's consulting arrangement, acquisition of securities and any conflict of interest. Consequently, Rothwell recommends that the Adviser Proposal be amended to include a condition requiring that a separate paragraph in the ''Plan of Distribution'' section of the prospectus under Rule 5110(c)(2)(C) and Rule 5121(a)(1) disclose certain specific information.[23]
- Lastly, Rothwell recommends that the Adviser Proposal be amended to include a condition requiring that an ''independent financial consultant'' comply with the 180-day lock-up restriction in Rule 5110(g) with respect to any securities of the issuer acquired pursuant to the consulting agreement or otherwise during the 180-day review period.[24] Rothwell also recommends that FINRA require that any option, warrant or convertible security acquired by the ''independent financial adviser'' during the 180-day review period comply with the restriction of Rule 5110(f)(2)(H) (with the exception of Rule 5110(f)(2)(H)(ii)) on the terms of such securities.[25]

Rothwell also is concerned that the ordinary advisory services enumerated by FINRA and any other services provided by an ''independent financial consultant'' may be difficult to distinguish from, and may merge into, those activities that would bring such a consultant within the definitions of ''underwriter and related persons'' and ''participation.'' [26] Consequently, Rothwell requests that FINRA assist members in complying with the Adviser Proposal exemption by enumerating permissible consulting activities for an ''independent financial adviser'' and providing (where possible) guidance with respect to the types of activities that the consultant should not engage in (which is further discussed in the next section).[27]

Additionally, Rothwell expressed concern that an independent financial

[8] Rule 5121(f)(1) provides that the term ''affiliate'' means an entity that controls, is controlled by or is under common control with a member.

[9] Rule 5121 defines ''conflict of interest'' to include situations where the issuer ''controls, is controlled by or is under common control with the member or the member's associated persons.''

[10] *See supra* note 3.

[11] *See supra* note 4.

[12] *See* SIFMA Letter *supra* note 4, at 2.

[13] *See* Rothwell Letter *supra* note 4, at 2.

[14] *See* Rothwell Letter *supra* note 4, at 3.

[15] *See id.* Rothwell provides examples of eight specific provisions of FINRA's rules from which an independent financial adviser might be exempt. *See id.*

[16] *See* Rothwell Letter *supra* note 4, at 4.

[17] *See id.*

[18] *See id.*

[19] *See* Rothwell Letter *supra* note 4, at 5–6.

[20] *See* Rothwell Letter *supra* note 4, at 5.

[21] *See id.*

[22] *See id.*

[23] *See* Rothwell Letter *supra* note 4, at 5–6. Specifically, the information that Rothwell states should be included in the prospectus are: (1) The identity of the consultant; (2) an explanation of the consulting arrangement, including the form (cash and securities or other arrangement) and amount of any compensation, and any terms providing for liquidated damages or a right of first refusal; (3) the acquisition of any securities of the issuer by the consultant during the 180-day review period in addition to those disclosed under (2) above; and (4) any ''conflict of interest'' with the issuer as defined in Rule 5121(f)(5).

[24] *See* Rothwell Letter *supra* note 4, at 6.

[25] *See id.*

[26] *See* Rothwell Letter *supra* note 4, at 7.

[27] *See id.*

consultant, in the course of providing advice on the options for financing and the terms proposed by underwriters, among other possible advice requested by an issuer, would be considered to be engaged in the ''solicitation or distribution of the offering,'' as prohibited by the Adviser Proposal, or to be a ''finder'' under the definition of ''underwriter and related persons'' by assisting an issuer in identifying potential FINRA members or registered investment advisers that could serve as distribution channels and even contacting and arranging introductions to such persons.[28] Consequently, Rothwell also requests that FINRA clarify the scope of the prohibition on ''solicitation or distribution of the offering'' and of acting as a finder to assist FINRA members to comply with the exemption provided by the Adviser Proposal.[29]

With respect to the proposed rule change to Rule 5110(g)(1) (related to the lock-up restriction) and Rule 5121(f)(6) (narrowing the scope of the conflict of interest rule), Rothwell supports FINRA's proposed modifications.[30] And to the extent that FINRA does not adopt some form of Rothwell's recommendation to continue to require the filing of information relevant to a FINRA member that claims to be an independent financial adviser,[31] Rothwell is opposed to the proposed modification to Rule 5110(b)(6)(A)(iii).[32] However, Rothwell stated that if FINRA does modify its proposal in line with Rothwell's recommendation, Rothwell supports narrowing the information filing requirement.[33]

FINRA responded to the comments in a letter dated April 16, 2014.[34] FINRA stated that in filing this proposed rule change, it concluded that the potential for abuse by independent financial advisers of issuers is minimized when a financial adviser is not engaged in, or affiliated with any entity that is engaged in, the solicitation or distribution of the offering.[35] FINRA further stated that the purpose of the corporate financing rules—to prohibit the imposition of unfair and unreasonable underwriting terms and arrangements on issuers by members participating in a public offering—is served and the risk of unfairness and unreasonableness is minimized when a member provides only advisory or consulting services.[36] Indeed, FINRA stated that its review of public offerings filed under Rule 5110 in the last decade did not identify abusive underwriting terms and arrangements associated with firms that would fall under the proposed definition of independent financial adviser.[37]

In response to Rothwell's request to clarify the intended scope of the modifications in light of the Adviser Proposal,[38] FINRA confirmed that the proposed rule change would exclude an independent financial adviser, acting solely in that capacity, from the requirements of Rule 5110, Rule 5121 and Rule 2310.[39]

In addition, FINRA stated that Rothwell's concerns stemming from the filing requirements of Rule 5110(b)(6)[40] and the disclosure requirements of Rule 5110(c)(2)(C)[41] are irrelevant to the rules that regulate the underwriting terms and arrangements in public offerings—the purpose of the corporate financing rules.[42]

In response to Rothwell's recommendation that the filing and disclosure requirements of Rule 5110(b)(6)(A)(iii) continue to apply to independent financial advisers,[43] FINRA stated that the facts and its experience support the elimination of these requirements for independent financial advisers and do not justify burdening independent financial advisers with these requirements.[44] In particular, FINRA stated that although the information sought by the filing and disclosure requirements of Rule 5110(b)(6)(A)(iii) from an underwriter is useful to assist investors in understanding potential conflicts raised by the underwriter's financial interests in the issuer, this conflict is unlikely to arise because an independent financial adviser is not engaged in underwriting the offering or otherwise participating in its solicitation and distribution.[45]

FINRA also did not agree with Rothwell's recommendation[46] that independent financial advisers that acquire securities during the 180-day review period should be subject to the compensation requirements of Rule 5110(g) and Rule 5110(f)(2)(H).[47] FINRA pointed out that although Rule 5110 is intended to impose requirements on underwriters and their affiliates to address potential conflicts, FINRA believes that independent financial advisers who lack leverage and influence over pricing and other terms of an offering are not subject to those types of conflicts.[48]

Finally, FINRA provided clarification[49] on the types of activities that would be permitted and prohibited for an independent financial adviser, particularly with respect to the meaning of ''solicitation or distribution of the offering,'' as requested by Rothwell.[50] FINRA stated the existing definition of ''participation or participating in a public offering'' in Rule 5110(a)(5) presently includes ''participation in the distribution'' and furnishing of customer or broker lists ''for solicitation.''[51] FINRA also emphasized that it is prepared to address factual questions specific to a particular filing and offer its interpretation of the permissible services of independent financial advisers.[52]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's response to the comments, and believes that FINRA has responded adequately to the comments. The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[53] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[54] which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[28] *See id.*

[29] *See* Rothwell Letter *supra* note 4, at 7–8.

[30] *See* Rothwell Letter *supra* note 4, at 8–9.

[31] *See supra* notes 20–21 and accompanying text.

[32] *See* Rothwell Letter *supra* note 4, at 8.

[33] *See id.*

[34] *See supra* note 5.

[35] *See* FINRA Letter *supra* note 5, at 3.

[36] *See id.*

[37] *See* FINRA Letter *supra* note 5, at 3. The proposal defined an independent financial adviser as ''a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering.'' *See* Notice *supra* note 3.

[38] *See supra* note 15 and accompanying text.

[39] *See* FINRA Letter *supra* note 5, at 3.

[40] *See supra* notes 20–21 and accompanying text.

[41] *See supra* note 23 and accompanying text.

[42] *See* FINRA Letter *supra* note 5, at 3–4.

[43] *See supra* notes 20–21 and 32 and accompanying text.

[44] *See* FINRA Letter *supra* note 5, at 4.

[45] *See id.* FINRA also stated that it believes that targeted filing and disclosure requirements that focus squarely on underwriting compensation and arrangements would enhance the effectiveness of these provisions in Rule 5110(b)(6)(A)(iii). *See id.*

[46] *See supra* notes 24–25 and accompanying text.

[47] *See* FINRA Letter *supra* note 5, at 4–5.

[48] *See* FINRA Letter *supra* note 5, at 4.

[49] *See* FINRA Letter *supra* note 5, at 5.

[50] *See supra* notes 28–29 and accompanying text.

[51] *See* FINRA Letter *supra* note 5, at 5.

[52] *See id.*

[53] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[54] 15 U.S.C. 78*o*–3(b)(6).

in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As discussed above, FINRA proposed to amend Rule 5110(a)(5) to revise the definition of ''participation'' to exclude from the definition's scope advisory or consulting services provided to the issuer by an independent financial adviser. The Commission believes that this revision will reduce the burden on independent financial advisers while not compromising investor protection, as the harms sought to be prevented by Rule 5110 are not implicated where advisory or consulting services are being carried out by an independent party such as an independent financial adviser.

With regard to FINRA's proposal to eliminate the lock-up restrictions for certain securities, the Commission believes that it is appropriate to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period consistently with the securities on which their acquisition or conversion was based. The amendment should further the goal of preventing fraudulent and manipulative acts and practices and protecting investors and the public interest, especially in light of the continued application of the protections described in Rule 5110(d)(5)(D)(ii)–(iv).

With regard to FINRA's proposal to limit the scope of the disclosure requirement contained in Rule 5110(b)(6)(A)(iii) by specifying that the rule applies to ''any participating member,'' rather than simply ''any member,'' the Commission believes that this proposal should reduce the burden on members not participating in an offering who were required to report information regarding the acquisition of the issuer's unregistered equity securities to FINRA.

In addition, the Commission believes that FINRA's proposal to amend the scope of the definition of ''control'' in Rule 5121(f)(6) is appropriate because it tailors the requirement to report information to eliminate an unnecessary burden on members while also maintaining the rule's efficacy.

The Commission further believes that FINRA, through its response, has adequately addressed the concerns expressed in Rothwell's letter by providing additional guidance and clarification on its proposed changes to Rules 5110 and 5121 and further explaining the interaction of this proposal with other FINRA Rules.

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[55] that the proposed rule change (SR–FINRA–2014–003) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09972 Filed 4–30–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72018; File No. SR–NYSEArca–2014–40]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Governing Letters of Guarantee and Letters of Authorization

April 25, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 21, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Exchange rules governing Letters of Guarantee and Letters of Authorization. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As further described below, each OTP Holder acting as either a Market Maker or Floor Broker on NYSE Arca currently is required to submit to the Exchange a Letter of Guarantee or Letter of Authorization for its trading activities from a Clearing Member.[4] Typically, by a Letter of Guarantee, the Clearing Member accepts financial responsibility for all Exchange transactions of a Market Maker[5] and, by a Letter of Authorization, a Clearing Member is responsible for the clearance of the Exchange transactions of a Floor Broker.[6]

The purpose of the proposal is to amend various Exchange rules governing Letters of Guarantee and Authorization to:

- Provide that any written notice of revocation of a Letter of Guarantee or Letter of Authorization will become effective upon processing by the Exchange.
- give the Exchange the ability to prevent access and connectivity if a Market Maker or Floor Broker is subject to written notice of revocation.

Changes to Rule 6.36—Letters of Guarantee

Rule 6.36(c) states that a Letter of Guarantee filed with the Exchange shall remain in effect until a final written notice of revocation has been filed with the Exchange. The current rule sets forth a time period for the effectiveness of a revocation to take place. However the Exchange does not believe that a

[4] A Clearing Member is an Exchange OTP Firm or OTP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation. *See* Rule 6.1(b)(3).

[5] *See* Rule 6.36(a).

[6] *See* Rule 6.45(a).

specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 6.36(c) to provide that notices of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Guarantee on the Chicago Board Options Exchange (''CBOE'').[7]

Once a notice of revocation has been processed, a Market Maker no longer has in effect a Letter of Guarantee, as required by Rule 6.36(a). If a Market Maker no longer has a valid Letter of Guarantee, that Market Maker presents risk to the marketplace and the Exchange believes it is appropriate to terminate access and connectivity to the Exchange in these situations. Accordingly, the Exchange proposes to further amend Rule 6.36(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Market Maker. Preventing access and connectivity by a Market Maker who does not have a valid Letter of Guarantee is consistent with similar procedures of the CBOE.[8]

Changes to Rule 6.45—Letters of Authorization

Rule 6.45(c) states that a Letter of Authorization filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange. The current rule sets forth a time period for the effectiveness of a revocation to take place. However the Exchange does not believe that a specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 6.45(c) to provide that a notice of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rules change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.[9]

Once a notice of revocation has been processed, a Floor Broker no longer has in effect a Letter of Authorization, as required by Rule 6.45(a). If a Floor Broker no longer has a valid Letter of Authorization, that Floor Broker presents risk to the marketplace and the Exchange believes it is appropriate to terminate access and connectivity to the Exchange in these situations. Accordingly, the Exchange proposes to further amend Rule 6.45(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Floor Broker. Preventing access and connectivity to a Floor Broker who does not have on file an effective Letter of Authorization is consistent with similar procedures of the CBOE.[10]

The Exchange also proposes to adopt an additional provision to Rule 6.45(c) stating that final revocation shall in no way relieve a Clearing OTP Holder or OTP Firm of responsibility for clearing transactions effected by a Floor Broker prior to the effectiveness of such final revocation. The Exchange believes that this provision, which currently applies when a Market Maker is subject to a notice of revocation, is equally appropriate in instances when a Floor Broker is subject to a notice of revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.[11]

The Exchange notes that nothing in existing or proposed rules would prohibit a Market Maker or Floor Broker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Preventing access and connectivity to the Exchange by a Market Maker or Floor Broker subject to a notice of revocation will promote just and equitable principles of trade and serves to protect investors and the public because it prevents trading by a Market Maker or Floor Broker without financial or clearing guarantees for its trading. A Market Maker or Floor Broker who no longer has a valid Letter of Guarantee or Authorization presents risk to the marketplace and the Exchange believes it is appropriate to prevent access and connectivity to the Exchange in these situations. In addition, making a notice of revocation effective upon processing by the Exchange, instead of being encumbered by a specified time frame, will permit the Exchange to act swiftly to take measures aimed at market integrity and investor protection.

The Exchange believes the proposed rule change is also consistent with the requirements that the rules of an exchange provide a fair procedure for the denial or limitation by an exchange of any person with respect to access to services offered by the Exchange because the Exchange would not prohibit or limit a Floor Broker or Market Maker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes will apply equally to all Floor Brokers and Market Makers and is designed to protect all OTP Holders, OTP Firms and public investors effecting transactions on the Exchange. In addition, the proposed changes will not impose any unnecessary burden on the operation of the Exchange because the changes will allow the Exchange to adopt more efficient procedures for the processing notices of revocation.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii)

[7] *See* CBOE Rule 8.5(c).

[8] *See* CBOE Rule 3.28(b).

[9] *See* CBOE Rule 6.72(c).

[10] *Supra* note 8.

[11] *Supra* note 9.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to promptly adopt and implement new procedures aimed at market integrity and investor protection. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As such, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.[16]

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–40. 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 at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–40, and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09918 Filed 4–30–14; 8:45 am]

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[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72020; File No. SR–BATS–2014–015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Institute an Incentive Program for Market Makers for BATS Exchange, Inc.

April 25, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2014, BATS Exchange, Inc. (''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to institute an incentive program for market makers registered with the Exchange (''Market Makers'')[3] in ETPs[4] listed on the Exchange (the ''LMM Program''). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[5] The Exchange will implement the proposed rule change on a date that will be circulated in a notice from the BATS Trade Desk.[6] The Exchange also intends to file a proposal to adopt the financial incentives related to the LMM Program through a separate filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BATS Rule 11.5.

[4] As defined in proposed Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] The Exchange will file a separate proposal prior to implementation of the proposed rule change in which it will add the relevant pricing to its fee schedule.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.[7] Shortly thereafter, the Exchange also received approval to operate a program in which all BATS-listed securities participate that is designed to incentivize certain Market Makers as Competitive Liquidity Providers (''CLPs'') to enhance liquidity on the Exchange in such BATS-listed securities (the ''CLP Program'') by offering daily financial rebates to CLPs based on the size of their *quotes* at the NBBO[8] throughout the day.[9] In order to provide issuers with an additional option for enhancing liquidity in BATS-listed ETPs and as a competitive response to liquidity enhancement programs at other listing exchanges, the Exchange is proposing to implement an additional program designed to incentivize certain Market Makers that are willing to meet designated performance standards to enhance liquidity on the Exchange in ETPs by providing enhanced rebates to such Market Makers, the LMM Program, for *executions* in BATS-listed ETPs, as further described below. As proposed, the LMM Program is designed to incentivize select Market Makers to enter more aggressive orders in BATS-listed ETPs by providing enhanced rebates for executions in the BATS-listed ETP in which the Market Maker is registered as a lead market maker (a ''LMM'') where the LMM meets certain performance measurements designated by the Exchange. As proposed, a BATS-listed ETP that is participating in the CLP Program would not be eligible for participation in the LMM Program until and unless such ETP is no longer participating in the CLP Program. Further, any ETP that is listed on the Exchange after the implementation of the LMM Program will not be eligible for participation in the CLP Program. Prior to the implementation of the LMM Program, the Exchange intends to file a proposal detailing changes to the current CLP Program along with a new supplemental quoting incentive program in which ETPs participating in the LMM program may also participate.

The Exchange is proposing to adopt rules that are similar to those regarding the SEC approved NYSE Arca, Inc. (''Arca'') program for Lead Market Makers[10] (''Arca LMMs'') and The NASDAQ Stock Market LLC (''Nasdaq'') program for Designated Liquidity Providers (''DLPs'').[11] Under both programs, an Arca LMM for a security listed on Arca or a DLP for a security listed on Nasdaq is required to maintain minimum performance standards with regard to (i) percent of time at NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the case of derivative securities listed on Arca, the ability of the Arca LMM to transact in underlying markets. This list, however, is not exhaustive, so Nasdaq (and BATS, as proposed and further discussed below) could apply any additional minimum performance standards, including the ability of a DLP to transact in underlying markets. Additionally, because Arca LMMs and DLPs are required to be registered market makers, they must also meet each respective exchange's requirements for being a market maker. In return, an Arca LMM receives both enhanced rebates for adding liquidity and reduced fees for removing liquidity and a DLP on Nasdaq receives enhanced rebates for adding liquidity in their respective Arca LMM or DLP security or securities.

Under the Exchange's proposed program, a Market Maker in an ETP may become an LMM in an ETP. The Exchange anticipates providing enhanced rebates and/or reduced fees for LMM executions in the LMM Security,[12] subject to a separate fee filing. Under the LMM Program, an LMM is a Market Maker in an ETP that has committed to maintain Minimum Performance Standards.[13] As is true under the Arca and Nasdaq programs, such Minimum Performance Standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered and the relevant measurement metrics will include, but are not necessarily limited to: (i) Percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; and (iv) average quoted spread. If an LMM does not meet the Minimum Performance Standards for a given month, fees and credits will revert to standard equities pricing, as provided in the Exchange's fee schedule. If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. An LMM must provide 30 days written notice if it wishes to withdraw its registration as an LMM in an LMM Security, unless it is also withdrawing as a market maker in the LMM Security.

As is true under the Arca and Nasdaq programs, after indicating interest in being an LMM for an ETP, a Market Maker will be selected by the Exchange to be an LMM based on factors including, but not limited to, experience with making markets in ETPs, adequacy of capital, willingness to promote the Exchange as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Exchange rules and securities laws. As is true under the Nasdaq program, the Exchange may limit the number of LMMs in a particular security, or modify a previously established limit, upon prior written notice to Members. Specifically, the Exchange may modify a limit either to increase or decrease the number of LMMs for a security upon providing such prior written notice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] 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. At the outset, the Exchange notes that registration as an Exchange Market Maker is equally available to all Members that satisfy the requirements of Rule 11.8 and that LMMs will be chosen based on the pre-determined factors described in the proposed rule. The Exchange believes

[7] *See* Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[8] As defined in Rule 1.5(o), NBBO means the national best bid or offer.

[9] *See* Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051).

[10] *See* Arca Rule 7.24 and NYSE Arca Schedule of Fees and Charges for Exchange Services at *https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees__for_2-1-14.pdf.*

[11] *See* Nasdaq Rule 7018(i).

[12] As defined in proposed Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

[13] As defined in proposed Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

that by allocating pricing benefits to Market Makers that make tangible commitments to enhancing market quality for BATS-listed ETPs, the proposal will encourage the development of new financial products, provide a better trading environment for investors in ETPs, and encourage greater competition between listing venues for ETPs. The Exchange also believes that the proposal will promote tighter spreads and deeper liquidity for all market participants by requiring LMMs to meet Minimum Performance Standards for an LMM Security based on percent of time at the NBBO, percent of executions better than the NBBO, average displayed size, and average quoted spread, plus any other metric that the Exchange deems appropriate for measuring performance in a particular LMM Security.

As proposed, the LMM Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for BATS-listed ETPs. The Exchange believes that the proposed change would increase competition with Arca and Nasdaq by incenting Exchange Market Makers to apply to become LMMs, which will enhance the quality of quoting in BATS-listed ETPs. The Exchange also believes that the LMM Program will further assist the Exchange to develop an alternative to Nasdaq and the Arca for an issuer seeking to list its ETPs. Accordingly, the Exchange believes that the proposal will complement the Exchange's program for listing ETPs on the Exchange, which will, in turn, provide issuers with another option for listing an ETP on the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.[16]

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive offering to the Arca LMM program currently in place at Arca and the DLP program in place at Nasdaq. The Exchange believes that this proposed rule change is necessary to permit fair competition among the listing exchanges. Further, the Exchange believes that the proposed changes as a whole will contribute to tighter spreads and additional liquidity on the Exchange in BATS-listed ETPs, which will, in turn, benefit competition due to the improvements to the overall market quality of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BATS–2014–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2014–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2014–015 and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09920 Filed 4–30–14; 8:45 am]

BILLING CODE 8011–01–P

[16] *Id.*

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires 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.

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority: 373]

Delegation by the Secretary of State to the Assistant Secretary for International Security and Nonproliferation of Authority With Respect to Authority Under Section 1204 of the Fiscal Year 2014 National Defense Authorization Act

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and by the Fiscal Year 2014

National Defense Authorization Act, Public Law 113–66 (the NDAA), I hereby delegate to the Assistant Secretary of State for International Security and Nonproliferation, to the extent authorized by law, the authority under Section 1204 of the NDAA to provide concurrence on proposed assistance by the Department of Defense pursuant to that Section.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, or the Deputy Secretary for Management and Resources may at any time exercise any authority or function delegated by this delegation of authority.

This delegation of authority shall be published in the **Federal Register**.

Dated: April 4, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–10009 Filed 4–30–14; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 8711]

Notice of Receipt of an Application by Otay Water District for Issuance of a Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of a Cross-Border Pipeline Facility for the Importation of Desalinated Water on the Border of the United States and Mexico

AGENCY: Department of State.

ACTION: Notice of Receipt of an Application by Otay Water District for Issuance of a Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of a Cross-border Pipeline Facility for the Importation of Desalinated Water on the Border of the United States and Mexico.

SUMMARY: Notice is hereby given that on November 25, 2013, the Department of State (DOS) received notice from the Otay Water District (''Otay Water'') that it seeks a Presidential Permit authorizing the construction, connection, operation, and maintenance of a cross-border pipeline facility for the importation of desalinated seawater on the border of the United States and Mexico in San Diego County, California. The Department will be working with Otay Water to conduct environmental analyses consistent with the National Environmental Policy Act (''NEPA'') and the California Environmental Quality Act (''CEQA'') for the Otay Mesa Conveyance System Project that would convey desalinated seawater from the new border crossing approximately four miles northeast to Otay Water's Roll Reservoir in San Diego County (''the Project''). The Project would provide a new water supply source from the U.S.-Mexico border to Otay Water's potable water system and ultimately delivered to end-user customers in the United States which Otay Water contends will reduce the strain and demand on the overall region's limited water supply.''

Under E.O. 11423, as amended, the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States of facilities for the exportation or importation of water or sewage to or from a foreign country. The Department of State has the responsibility to determine whether issuance of a new Presidential Permit in light of Otay Water's application would serve the U.S. national interest.

Otay Water's application is available at *http://www.state.gov/e/enr/applicant.*

FOR FURTHER INFORMATION CONTACT: Office of Environmental Quality, Oceans, Environment and Science Bureau (OES/EQT), Department of State, 2201 C St. NW., Ste. 2727, Washington, DC 20520, Attn: Mary Hassell, Tel: 202–736–7428.

Dated: April 24, 2014.

Michael Brennan,

Energy Officer, Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2014–10006 Filed 4–30–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR described the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on November 15, 2013 (**Federal Register**/Vol. 78, No. 221/pp. 68902–68903).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before June 2, 2014.

FOR FURTHER INFORMATION CONTACT: Dr. Kathy Sifrit, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–132), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–472, Washington, DC 20590. Dr. Sifrit's phone number is (202) 366–0868 and her email address is *kathy.sifrit@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2127—New.

Title: Physical Fitness and Driving Performance.

Form No.: NHTSA Form 1227.

Type of Review: Regular.

Respondents: Drivers age 70 and older who have responded to a solicitation for participation in a study of aging, physical fitness, and driving safety and have initiated a phone call expressing their interest in study participation.

Estimated Number of Respondents: An estimated that 270 respondents who contact researchers in response to descriptive solicitations.

Estimated Time per Response: The estimated time to respond to questions in the telephone conversations is 15 minutes for each conversation with a respondent.

Total Estimated Annual Burden Hours: 67.5 hours.

Frequency of Collection: The questions will be presented a single time.

Abstract: Older adults comprise an increasing proportion of the (driving) population and there is concern about the consequences of declining physical abilities such as strength, flexibility, and range of motion on the safe operation of motor vehicles. Previous research indicates that gains in physical fitness improve a number of abilities important for safe driving. NHTSA needs to learn more about these relationships between fitness and driving performance to support the development of recommendations and educational materials aimed at improving older driver safety. The objective in this project is to assess the effect(s) of

physical activity and physical fitness training on the driving performance of adults 70 and older. The National Highway Traffic Safety Administration (NHTSA) proposes to collect information from licensed older drivers about their driving habits and levels of physical activity in order to determine whether they are eligible to participate in a study of the effects of physical activity on driving performance. Drivers will volunteer for the study by responding to flyers posted at a community center, and/or announcements in newsletters and on community listserves, and/or sign-ups at a weekly farmer's market and other local events. Interested older drivers will contact a designated research team member through a toll-free number. Researchers will ask drivers a brief (<15 minutes) series of questions to determine eligibility to participate in the study, then describe the proposed study to respondents who qualify. Each driver who meets study inclusion criteria will then be asked if he or she wishes to participate. If yes, a project assistant will ask for a description of the car in order to identify it and install a data collection system that will collect driving data necessary for the study. The questions will allow research staff to ensure that prospective participants meet study inclusion criteria, are able and willing to wear fitness monitors to measure physical activity levels, and facilitate installing data collection instruments in each participant's vehicle. Analyses of these fitness/activity level and driving data will provide information about whether people age 70 and older who participate in regular physical activity perform better in a driving evaluation and/or drive more than do healthy, sedentary drivers of a similar age; whether particular physical training activities relate to improved functioning in specific driving tasks; and the extent to which driving performance and/or exposure of sedentary older adults will improve, following participation in physical activity. NHTSA will use the information to inform recommendations to the public regarding how improved physical fitness can result in better driving performance for the purpose of reducing injuries and loss of life on the highway.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov,* or fax: 202–395–5806.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued in Washington, DC, on April 28, 2014.

Jeffrey Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2014–09945 Filed 4–30–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35812]

Central Puget Sound Regional Transit Authority—Acquisition Exemption—Certain Assets of City of Tacoma in Pierce County, Wash.

The Central Puget Sound Regional Transit Authority (Sound Transit), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the City of Tacoma the physical assets and right-of-way of an approximately one-mile segment of the rail line commonly known as the Mountain Division, approximately located between milepost 1.0, at the BNSF Railway Company mainline near the Port of Tacoma, and milepost 1.99, at East D Street in the City of Tacoma, Pierce County, Wash. (the Tacoma Dome Segment). According to Sound Transit, the City of Tacoma, through its Department of Public Utilities, d/b/a Tacoma Rail, operates rail service over the Tacoma Dome Segment pursuant to an operating agreement with the General Government of the City of Tacoma, another subdivision of the city that owns the real property and physical assets comprising the Tacoma Dome Segment. Sound Transit states that, under the proposed transaction, it would not acquire any right or obligation to provide freight service on the Tacoma Dome Segment and that Tacoma Rail would retain the exclusive, permanent right to operate freight service on the Tacoma Dome Segment to all existing and new customers, even after Sound Transit acquires the Tacoma Dome Segment.[1]

Sound Transit states that it is in the final stage of negotiating a Purchase and Sale Agreement and Joint Use Agreement for the Tacoma Dome Segment with the City of Tacoma. According to Sound Transit, it is acquiring the Tacoma Dome Segment for the purpose of providing wholly intrastate passenger commuter rail operations and would not acquire any freight operating rights. Sound Transit also states that no interchange agreements, and no limitation on any future interchange agreements, are being imposed in connection with the proposed transaction.

Sound Transit certifies that, because it will conduct no freight operations on the line segment being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.

Sound Transit states that it expects to consummate the proposed transaction on or as soon as practicable after the effective date of the exemption, May 15, 2014 (30 days after the exemption is filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than May 8, 2014 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35812, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 28, 2014.

[1] A motion to dismiss the notice of exemption on grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–09978 Filed 4–30–14; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

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Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 70, 71, 72, et al.

Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 71, 72, 75, and 90

RIN 1219–AB64

Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising the Agency's existing standards on miners' occupational exposure to respirable coal mine dust in order to: Lower the existing exposure limits; provide for full-shift sampling; redefine the term ''normal production shift''; and add reexamination and decertification requirements for persons certified to sample for dust, and maintain and calibrate sampling devices. In addition, the rule provides for single shift compliance sampling by MSHA inspectors, establishes sampling requirements for mine operators' use of the Continuous Personal Dust Monitor (CPDM), requires operator corrective action on a single, full-shift operator sample, changes the averaging method to determine compliance on operator samples, and expands requirements for medical surveillance of coal miners.

Chronic exposure to respirable coal mine dust causes lung diseases that can lead to permanent disability and death. The final rule will greatly improve health protections for coal miners by reducing their occupational exposure to respirable coal mine dust and by lowering the risk that they will suffer material impairment of health or functional capacity over their working lives.

DATES: *Effective Date:* August 1, 2014. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Ms. McConnell can be reached at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice), or 202–693–9441 (facsimile).

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Availability of Information

Federal Register Publications: Access rulemaking documents electronically at *http://www.msha.gov/regsinfo.htm* or *http://www.regulations.gov.* Obtain a copy of a rulemaking document from the Office of Standards, Regulations, and Variances, MSHA, by request to 202–693–9440 (voice) or 202–693–9441 (facsimile). (These are not toll-free numbers.)

Information Collection Supporting Statement: The Information Collection Supporting Statement is available at *http://www.reginfo.gov/public/do/PRAMain* on MSHA's Web site at *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp* and at *http://www.regulations.gov.* A copy of the Statement is also available from MSHA by request to Sheila McConnell at *mcconnell.sheila.a@dol.gov*, by phone request to 202–693–9440, or by facsimile to 202–693–9441.

Regulatory Economic Analysis (REA): MSHA will post the REA on *http://www.regulations.gov* and on MSHA's Web site at *http://www.msha.gov/rea.htm.* A copy of the REA also can be obtained from MSHA by request to Sheila McConnell at *mcconnell.sheila.a@dol.gov*, by phone request to 202–693–9440, or by facsimile to 202–693–9441.

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this final rule is to reduce occupational lung diseases in coal miners. Chronic exposure to respirable coal mine dust causes lung diseases including coal workers' pneumoconiosis (CWP), emphysema, silicosis, and chronic bronchitis, known collectively as ''black lung.'' These diseases are debilitating and can result in disability and premature death. Based on data from the National Institute for Occupational Safety and Health (NIOSH), new cases continue to occur among coal miners. The prevalence rate of lung disease among our nation's coal miners continues despite the fact that incurable black lung is preventable. Additionally, young miners are showing evidence of advanced and seriously debilitating lung disease from excessive dust exposure.

Over the decade 1995–2004, more than 10,000 miners died from black lung.[1] As of December 2011, according to the Department of Labor's Office of Workers' Compensation Programs, Division of Coal Mine Workers'

[1] *http://www.cdc.gov/niosh/docs/2008-143/pdfs/2008-143a-iii.pdf*, DHHS (NIOSH) Publication No. 2008–143a, Work-Related Lung Disease Surveillance Report 2007, Vol. 1, Table 2–4. Coal workers' pneumoconiosis: Number of deaths by state, U.S. residents age 15 and over, 1995–2004, p. 34, September 2008.

Compensation, the federal government has paid over $44 billion in Federal Black Lung benefits to beneficiaries (former miners, widows, dependents) since 1970 (U.S. Department of Labor, Division of Coal Mine Workers' Compensation. 2012. Black Lung Program Statistics).

The final rule is changed from the proposal. This final rule will reduce coal miners' occupational exposure to respirable coal mine dust. As a result, it will lower their risk of developing black lung disease and suffering material impairment of health or functional capacity.

B. Legal Authority for Regulatory Action

Sections 101(a)(6)(A), 103(h), and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), provide the legal authority for this final rule. (30 U.S.C. 811(a)(6)(A), 813(h), and 957).

Section 101 of the Mine Act gives the Secretary of Labor (Secretary) the authority to promulgate mandatory health standards involving toxic materials or harmful physical agents. It requires that the Secretary set standards to assure, based on the best available evidence, that no miner will suffer material impairment of health from exposure to toxic materials or harmful physical agents over his working life. (30 U.S.C. 811(a)(6)(A)). In developing these standards, the Mine Act requires the Secretary to consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under other laws. Id.

Section 103(h) of the Mine Act gives the Secretary the authority to promulgate standards involving recordkeeping. (30 U.S.C. 813(h)). Section 103(h) provides that every mine operator must establish and maintain records and make reports and provide such information as the Secretary may require. Id.

Section 508 of the Mine Act gives the Secretary the authority to issue regulations to carry out any provision of the Act. (30 U.S.C. 957).

C. Summary of Major Provisions

1. *Lowers the Existing Concentration Limits for Respirable Coal Mine Dust.* After August 1, 2016, the concentration limits for respirable coal mine dust are lowered from 2.0 milligrams of dust per cubic meter of air (mg/m^3) to 1.5 mg/m^3 at underground and surface coal mines, and from 1.0 mg/m^3 to 0.5 mg/m^3 for intake air at underground mines and for part 90 miners (coal miners who have evidence of the development of pneumoconiosis). Lowering the concentration of respirable coal mine dust in the air that miners breathe is the most effective means of preventing diseases caused by excessive exposure to such dust.

2. *Requires the Use of the Continuous Personal Dust Monitor (CPDM).* On February 1, 2016, mine operators are required to use the continuous personal dust monitor (CPDM) to monitor the exposures of underground coal miners in occupations exposed to the highest respirable coal mine dust concentrations and the exposures of part 90 miners. Use of the CPDM is optional for surface coal mines, non-production areas of underground coal mines, and for underground anthracite mines using the full box, open breast, or slant breast mining methods. The CPDM is a new sampling device that measures continuously, and in real-time, the concentration of respirable coal mine dust and provides sampling results at specific time intervals and at the end of the work shift. It is jointly approved for use in coal mines by MSHA and NIOSH under criteria set forth in Title 30, Code of Federal Regulations (30 CFR) part 74. When the CPDM is used, mine operators, miners, and MSHA will be notified of the results in a more timely manner than when the existing approved Coal Mine Dust Personal Sampler Unit (CMDPSU) is used. This will enable mine operators to take earlier action to identify areas with dust generation sources, reduce the dust levels in those areas, and prevent miners from being overexposed.

3. *Redefines the Term ''Normal Production Shift''.* The term normal production shift is redefined to require that underground mine operators take respirable dust samples in the mechanized mining unit (MMU) when production is at least 80 percent of the average production over the last 30 production shifts. The MMU is a unit of mining equipment used in the production of material. Under the existing definition, underground mine operators are required to sample when production is at least 50% of the average production reported during the operator's last sampling period (i.e., last set of five valid samples). Under the revised definition, miners will be better protected because samples will be collected during periods that are more representative of normal mining operations and dust levels to which miners are exposed.

4. *Requires Full-Shift Sampling.* The final rule requires the operator to collect respirable dust samples for the full shift that a miner works. If a miner works a 12-hour shift, respirable dust samples must be taken with an approved sampling device for the entire work shift, rather than a maximum of 8 hours as required under the existing standards. Full-shift sampling provides more representative measurements of miners' respirable dust exposures and increases their health protection.

5. *Changes the Averaging Method to Determine Compliance on Operator Samples.* Under existing standards, corrective action is required only after the average of five operator samples exceeds the respirable coal mine dust standard and a citation is issued. This permits miners to be exposed to levels of respirable coal mine dust that exceed the standard without requiring any corrective action by the operator to reduce concentrations to meet the standard. The final rule requires immediate corrective actions to lower dust concentrations when a single, full-shift operator sample meets or exceeds the excessive concentration value (ECV) for the dust standard. These corrective actions will result in reduced respirable dust concentrations in the mine atmosphere and, therefore, will provide better protection of miners from further high exposures.

6. *Provides for the Use of Single, Full-Shift Samples, by MSHA inspectors, to Determine Compliance.* MSHA inspectors will use single, full-shift samples to determine noncompliance with the respirable dust standards. MSHA has determined that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. MSHA is rescinding the ''1972 Joint Finding'' [2] by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the validity of single-shift sampling. MSHA considers a single, full-shift measurement of respirable coal mine dust to ''accurately represent'' atmospheric conditions (Section 202(f) of the Mine Act) at the sampling location, if the sampling and analytical method used meet the NIOSH Accuracy Criterion. Limiting the respirable dust concentration in the active workings ensures that the respirable dust concentration inhaled by any miner is limited.

7. *Expands Medical Surveillance Requirements.* The final rule adds spirometry testing, occupational history,

[2] In 1972, acting under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), the Secretaries of the Interior and Health, Education and Welfare made a joint finding (1972 Joint Finding), under § 202(f) of the Coal Act, which concluded that a single shift measurement of respirable dust will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed (37 FR 3833, February 23, 1972).

and symptom assessment to the periodic chest radiographic (x-ray) examinations required to be offered by mine operators to underground miners under NIOSH's existing standards. The additional medical surveillance requirements will alert miners to any abnormal declines in lung function, which is common evidence of Chronic Obstructive Pulmonary Disease (COPD) and not detected by chest x-rays. Notification of reduced lung function will enable miners to be proactive in protecting their health. The final rule extends the same medical surveillance requirements afforded underground miners, including chest x-ray examinations, to surface miners since they are also at risk of developing lung diseases and material impairment of health or functional capacity from exposure to respirable coal mine dust. In addition, the final rule extends part 90 miner transfer rights, which are currently provided to underground miners who have x-ray evidence of pneumoconiosis, to surface miners who have evidence of pneumoconiosis. Under 30 CFR part 90, these miners can elect to work in less dusty atmospheres to prevent the progression of disease. The medical surveillance requirements will provide improved health protection for all coal miners.

8. *Strengthens Requirements for Certified Persons.* The final rule revises requirements for certified persons who perform dust sampling and who maintain and calibrate sampling equipment. To strengthen the certification process, the final rule adds a requirement that persons must complete an MSHA course of instruction. This complements the existing requirement that, to be certified, the candidate must pass an MSHA examination to demonstrate competency in the tasks needed for respirable dust sampling procedures and in maintenance and calibration procedures. Completing the MSHA course and passing the MSHA examination will ensure that only trained persons perform these important functions. Certified persons are required under the final rule to pass the MSHA examination every three years to maintain their certification. The final rule adds procedures allowing MSHA to revoke a person's certification for failing to properly carry out the required sampling or maintenance and calibration procedures.

The final rule was strategically developed to provide a comprehensive, integrated approach to achieve MSHA's goal of reducing miners' exposure to respirable coal mine dust in a protective and feasible manner.

D. Major Provisions in the Proposed Rule That Are Not in the Final Rule

1. *Sampling Frequency.* The proposed rule would have required that CPDM sampling be conducted 7 days per week, 52 weeks per year for occupations exposed to the highest respirable coal mine dust concentrations and for part 90 miners.

2. *CPDM Performance Plan.* The proposed rule would have required operators who use CPDMs to develop and submit for approval a CPDM Performance Plan prior to using the sampling devices.

3. *Revisions to the Approved Ventilation Plan.* The proposed rule would have required operators to submit to the District Manager for approval the corrective actions to lower respirable dust concentrations.

4. *Equivalent 8-hour Concentration.* The proposal would have required the respirable coal mine dust sampled to be expressed in terms of an 8-hour equivalent concentration for shifts longer than 8 hours.

5. *Separate Intake Air for each MMU.* The proposed rule would have required a separate intake airway for each MMU.

E. Projected Costs and Benefits

- Lowers miners' exposure to respirable coal mine dust, thus reducing and preventing Black Lung.
- Significant reductions in CWP, progressive massive fibrosis (the most severe stage of CWP), severe emphysema, and deaths from non-malignant respiratory disease.
- Estimated annualized benefits: $36.9 million: (3% discount rate) and $20.0 million (7% discount rate).
- Estimated annualized costs: $24.8 million (3% discount rate) and $28.1 million (7% discount rate).

II. Introduction and Background Information

This final rule promotes the Secretary of Labor's vision of ''Promoting and Protecting Opportunity'' [3] and supports the Department of Labor's (DOL's) goal of securing safe and healthy workplaces, particularly for vulnerable workers in high-risk industries such as mining, by reducing workplace deaths and improving the health of coal miners.

This final rule is an important element in MSHA's Comprehensive Initiative to *END BLACK LUNG—ACT NOW!* Launched in December 2009, this initiative will significantly reduce disabling occupational lung disease in coal miners. It includes four components: Collaborative outreach, education and training, enhanced enforcement, and rulemaking. This final rule represents one aspect of MSHA's comprehensive and integrated approach to reduce and eliminate continued risks to miners from exposure to respirable coal mine dust. MSHA is committed to working with stakeholders to develop comprehensive outreach materials and to resolve any implementation issues. MSHA also intends to hold stakeholder seminars related to implementation of the final rule in locations accessible to the mining public.

Throughout the preamble, the terms ''respirable coal mine dust'', ''coal mine dust'', and ''respirable dust'' are used interchangeably.

This final rule combines the following rulemaking actions: (1) ''Occupational Exposure to Coal Mine Dust (Lowering Exposure);'' (2) ''Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust'' (Plan Verification) (65 FR 42122, July 7, 2000, and 68 FR 10784, March 6, 2003); (3) ''Determination of Concentration of Respirable Coal Mine Dust'' (Single Sample) (65 FR 42068, July 7, 2000, and 68 FR 10940 March 6, 2003); and (4) ''Respirable Coal Mine Dust: Continuous Personal Dust Monitor (CPDM)'' (74 FR 52708, October 14, 2009). MSHA is withdrawing Plan Verification and Single Sample as separate rulemaking actions. However, the rulemaking records for the Plan Verification, Single Sample, and the CPDM rulemaking actions are incorporated into the rulemaking record for this final rule.

Several provisions in this final rule will singularly lower coal miners' exposure to respirable dust and reduce their risk of disease and disease progression. These provisions include lowering the respirable dust standards, using CPDMs for sampling, basing noncompliance determinations on MSHA inspectors' single shift sampling, full-shift sampling to account for occupational exposures greater than 8 hours per shift, changing the definition of normal production shift, changing the operator sampling program to require more sampling, requiring operator corrective action on one operator sample, and changes in the averaging method for operator samples to determine compliance. MSHA's quantitative risk assessment (QRA) in support of the final rule estimates the reduction in health risks when two provisions of the final rule are implemented—the final respirable dust standards and single shift sampling. The QRA shows that these two provisions would reduce the risks of CWP, severe

[3] Department of Labor 2014–2018 Strategic Plan Outreach, *www.dol.gov/sec/stratplan/2014outreach/.*

emphysema, and death from non-malignant respiratory disease (NMRD). The QRA projects, over a 45-year occupational lifetime, improvements in almost every underground job category and at least 6 surface categories. Large aggregated improvements are also projected for longwall tailgate operators and continuous mining machine operators (See the QRA discussion in Section III.B. of this preamble).

While the final 1.5 mg/m³ and 0.5 mg/m³ standards will reduce the risk of impairment, disease, and premature death, MSHA's QRA estimates remaining risk at the final standard. It is important to note that other provisions of this comprehensive and integrated final rule (e.g., use of CPDMs for sampling, changes in the definition of normal production shift, sampling for a full shift, changes in the sampling program, requiring operator corrective action on one operator sample, and changes in the averaging method to determine compliance on operator samples) will reduce these risks. The impacts of these other final provisions were not considered in the QRA. MSHA expects the final provisions, implemented in a comprehensive and integrated manner, will reduce the continued risks that miners face from exposure to respirable coal mine dust and would further protect them from the debilitating effects of occupational respiratory disease.

A. MSHA's Existing Respirable Dust Standards

MSHA's existing respirable dust standards, promulgated on April 8, 1980 (45 FR 23990) under Section 101 of the Mine Act, superseded Section 202(b) of the Mine Act. The standards require coal mine operators to continuously maintain the average concentration of respirable dust to which each miner is exposed during each shift at or below 2.0 milligrams per cubic meter of air (2.0 mg/m³) (30 CFR 70.100, underground coal mines; and 71.100, surface coal mines and surface areas of underground coal mines). Miners who have evidence of pneumoconiosis and are employed at underground coal mines or surface work areas of underground coal mines have the option to work in areas where average respirable dust concentrations do not exceed 1.0 mg/m³ of air (30 CFR 90.100, part 90 miners). There is no separate standard for respirable silica; rather, where the respirable coal mine dust contains more than five percent quartz, the respirable coal mine dust standard is computed by dividing the percentage of quartz into the number 10 (30 CFR 70.101 (underground coal mines), § 71.101 (surface coal mines and surface areas of underground coal mines), and § 90.101 (part 90 miners)).

Under MSHA's existing standards, mine operators are required to collect bimonthly respirable dust samples and submit them to MSHA for analysis to determine compliance with respirable dust standards (compliance samples). If compliance samples do not meet the requirements of the dust standard, MSHA issues a citation for a violation of the standard and the operator is required to take corrective action to lower the respirable dust concentration to meet the standard. Further, the operator must collect additional respirable dust samples during the time established for abatement of the hazard or violation (abatement sampling).

Underground coal mine operators collect and submit two types of samples during bimonthly sampling periods: (1) ''Designated occupation'' (DO) samples taken for the occupations exposed to the greatest concentrations of respirable dust in each mechanized mining unit (§ 70.207); and (2) ''designated area'' (DA) samples collected at locations appropriate to best measure concentrations of respirable dust associated with dust generation sources in the active workings of the mine (§ 70.208). The operator's approved ventilation and methane and dust control plan, required in existing § 75.370, must show the specific locations in the mine designated for taking the DA samples. In addition, mine operators take respirable dust samples for part 90 miners (§§ 90.207 and 90.208).

For surface work areas of underground mines and for surface mines, mine operators are required to collect bimonthly samples from ''designated work positions'' (DWPs), which are designated by the District Manager (§ 71.208).

Compliance determinations are based on the average concentration of respirable dust measured by five valid respirable dust samples taken by the operator during five consecutive normal production shifts or five normal production shifts worked on consecutive days (multiple-shift samples). Compliance determinations are also based on the average of multiple measurements taken by the MSHA inspector over a single shift (multiple, single-shift samples) or on the average of multiple measurements obtained for the same occupation on multiple days (multiple-shift samples).

Under the existing program, sampling results are often not known to mine operators, miners, and MSHA for at least a week or more after the samples are collected. Due to the delay in receiving sampling results, operators are unable to take timely corrective action to lower dust levels when there are overexposures.

B. 1992 Coal Mine Respirable Dust Task Group Report, 1995 NIOSH Criteria Document, and 1996 Dust Advisory Committee Report

In May 1991, the Secretary directed MSHA to conduct a review of the coal mine respirable dust control program and to develop recommendations on how the program could be improved. MSHA established an interagency task group (Task Group) which published their findings and recommendations in the June 1992, Review of the Program to Control Respirable Coal Mine Dust in the United States. The Task Group Report can be accessed electronically at *http://www.regulations.gov/#!documentDetail;D=MSHA-2010-0007-0211.*

On November 7, 1995, NIOSH submitted to the Secretary a criteria document recommending reduced standards for respirable coal mine dust and crystalline silica. On April 25, 1996, MSHA published a **Federal Register** notice (61 FR 18308) stating that it had decided to respond to the 1995 NIOSH Criteria Document by developing a proposed rule ''derived from the recommendations'' in the NIOSH Criteria Document. MSHA further stated that, although it would begin ''the background work necessary to develop such a rule,'' it would defer development of the rule until it received a report from the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (Dust Advisory Committee), which the Secretary had established on January 31, 1995, and to which MSHA had referred the NIOSH criteria document. One of the NIOSH recommendations in the Criteria Document was to use single, full-shift samples to compare miners' exposures with the NIOSH recommended exposure limit. The NIOSH Criteria Document can be accessed electronically at *http://www.cdc.gov/niosh/docs/95-106/.*

On November 14, 1996, the Dust Advisory Committee submitted its report to the Secretary. The Dust Advisory Committee Report can be accessed electronically at *http://www.msha.gov/S&HINFO/BlackLung/1996Dust%20AdvisoryReport.pdf.* The report contained 20 wide-ranging principal recommendations, subdivided into approximately 100 action items, aimed at eliminating coal miners' pneumoconiosis and silicosis. The report recommended that MSHA consider lowering the level of allowable

exposure to coal mine dust, with any reduction accompanied by a phase-in period to allow allocation of sufficient resources to the compliance effort. The report also recommended that MSHA should change the compliance sampling program to allow use of single, full-shift samples for determining compliance. On January 24, 1997, MSHA published a **Federal Register** notice (62 FR 3717) responding to the 1996 Dust Advisory Committee Report. In the response, MSHA stated its intent to conduct an in-depth evaluation of the recommendations and respond to them.

C. 2000 and 2003 Plan Verification Proposed Rules

On July 7, 2000, MSHA published the Plan Verification proposed rule (65 FR 42122, July 7, 2000). The proposal would have required underground mine operators to have a verified mine ventilation plan, with MSHA collecting samples to verify the adequacy of dust control parameters specified in the ventilation plan to maintain respirable dust standards (''verification sampling'').

In response to comments urging MSHA to withdraw the proposal, MSHA published a new proposed rule on March 6, 2003, (68 FR 10784), which would have required mine operators to have a ''verified'' mine ventilation plan and conduct verification sampling on each mechanized mining unit (MMU). Under the proposal, mine operators would have to demonstrate the adequacy of dust control parameters specified in the ventilation plan to maintain the concentration of respirable coal mine dust and quartz at or below dust standards. In addition, the mine operators' existing bimonthly respirable dust sampling program for each MMU and DA would have been eliminated and MSHA would have assumed responsibility for compliance and abatement sampling in underground coal mines.

The 2003 proposal would have also provided for the use of CPDMs once the CPDM was verified as reliable under mining conditions and commercially available.

Public hearings were held in May 2003. The closing date for the comment period for the Plan Verification proposed rule was extended indefinitely to obtain information concerning CPDMs being tested by NIOSH (68 FR 39881, July 3, 2003).

The following provisions from the 2003 Plan Verification proposal have been revised and integrated into this final rule: (1) Use of the CPDM in monitoring respirable dust exposures; (2) recording the amount of material produced by each MMU during each production shift and retaining the record; (3) sampling for respirable dust during the entire time that a miner works to account for shifts longer than 8 hours; (4) requiring that dust control parameters in the mine's ventilation plan be revised when respirable dust overexposures are indicated; and (5) threshold values that would be used to determine violations based on single sample measurements.

D. 2000 Single Sample Proposed Rule

On July 7, 2000, MSHA and NIOSH jointly published a proposed rule on Determination of Concentration of Respirable Coal Mine Dust (Single Sample) (65 FR 42068). The proposal would have rescinded the 1972 Joint Finding and established that a single, full-shift measurement of respirable coal mine dust may be used to determine the average concentration on a shift if that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift.

MSHA proposed the 2000 Single Sample rule following the 11th Circuit Court of Appeals decision in *National Mining Association (NMA) et al.* v. *Secretary of Labor, et al.,* 153 F.3d 1264 (11th Cir. 1998). In this case, the Court reviewed the 1998 Final Joint Notice of Finding issued by MSHA and NIOSH. The 1998 Final Joint Finding, issued on February 3, 1998, concluded that the 1972 Joint Finding was incorrect and stated that the average respirable dust concentration to which a miner is exposed can be accurately measured over a single shift (63 FR 5664). The Court vacated the 1998 Joint Finding on procedural grounds. It found that MSHA was required by section 101(a)(6)(A) of the Mine Act to engage in rulemaking and demonstrate that a single, full-shift measurement adequately assures that no miner will suffer a material impairment of health, on the basis of the best available evidence; uses the latest available scientific data in the field; is technologically and economically feasible; and is based on experience gained under the Mine Act and other health and safety laws (153 F.3d at 1268–1269).

On March 6, 2003, MSHA and NIOSH reopened the rulemaking record to allow further comment on the Single Sample rulemaking and to solicit comment on new data and information added to the record (68 FR 10940). In May 2003, joint public hearings were held on the 2000 Single Sample proposal and the 2003 Plan Verification proposal. The comment period for the Single Sample proposal was extended indefinitely in order to obtain information on CPDMs being tested by NIOSH (68 FR 47886, August 12, 2003). The Single Sample proposal is integrated into and a part of this final rule, which permits MSHA inspectors to use single, full-shift samples to determine compliance with the respirable dust standard.

E. Continuous Personal Dust Monitor (CPDM)

On April 6, 2010 (75 FR 17512), MSHA and NIOSH published a final rule, effective June 7, 2010, revising approval requirements under 30 CFR part 74 for the existing coal mine dust personal samplers. It also established new approval requirements for the CPDM.

The CPDM is new technology that provides a direct measurement of respirable dust in the miner's work atmosphere on a real-time basis. In September 2006, NIOSH published the results of a collaborative study designed to verify the performance of the pre-commercial CPDM in laboratory and underground coal mine environments. According to the NIOSH Report of Investigations 9669, ''Laboratory and Field Performance of a Continuously Measuring Personal Respirable Dust Monitor,'' (Volkwein et al., U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (USDHHS, CDC, NIOSH) 2006), the CPDM is accurate, precise, and durable under harsh mining conditions in providing continuous exposure information previously not available to coal miners and coal mine operators.

On October 14, 2009, MSHA published a Request for Information (RFI) on potential applications of CPDM technology to monitor and control miners' exposure to respirable coal mine dust during a work shift (74 FR 52708). The comment period closed on December 14, 2009.

On September 6, 2011, NIOSH approved a commercial CPDM as meeting the CPDM requirements of 30 CFR part 74 (USDHHS, CDC, NIOSH, 2011).

F. Regulatory History of This Final Rule

On October 19, 2010, MSHA published a proposed rule, Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors (75 FR 64412). The comment period was scheduled to close on February 28, 2011. The QRA in support of the proposal and Preliminary Regulatory Economic Analysis (PREA) were made publicly available at that time.

On October 20, 2010, MSHA held a meeting at MSHA Headquarters in Arlington, Virginia, and via conference call to brief interested stakeholders on the proposed rule.

On November 15, 2010, MSHA published a Notice scheduling six public hearings on the proposed rule in locations accessible to the mining public (75 FR 69617). In response to requests from the public, two of the hearings were rescheduled and an additional hearing was added, for a total of seven, to provide a maximum opportunity for public participation in the rulemaking (75 FR 73995). Hearings were held: December 7, 2010, in Beckley, WV; January 11, 2011, in Evansville, IN; January 13, 2011, in Birmingham, AL; January 25, 2011, in Salt Lake City, UT; February 8, 2011, in Washington, PA; February 10, 2011, in Prestonsburg, KY; and February 15, 2011, in Arlington, VA.

On January 14, 2011, MSHA extended the comment period from February 28, 2011 to May 2, 2011 (76 FR 2617). On May 4, 2011, MSHA again extended the comment period to May 31, 2011 (76 FR 25277). On May 27, 2011, MSHA extended the comment period to June 20, 2011 (76 FR 30878).

On March 8, 2011, MSHA published a **Federal Register** notice (76 FR 12648) requesting comment on information that was included in the preamble to the proposed rule and other issues that were raised during the public hearings. The notice requested comment on 25 specific issues and included two clarifications.

Public comments and supporting documentation submitted were posted on the MSHA Web site and on *www.regulations.gov*, along with transcripts and exhibits from the public hearings.

Several commenters, referring to an MSHA response to a request for documents under the Freedom of Information Act (FOIA), stated that they were denied access to documents that were critical to a thorough evaluation of the proposed rule. The request involved documents specifically related to the QRA in support of the proposed rule, and documents generally related to the rulemaking.

All documents that were critical to a thorough evaluation of the proposed and final rules are in the rulemaking record, and posted on MSHA's Web site and on *www.regulations.gov*, as noted above. These publicly available documents include Agency materials considered in the development of the proposed and final rules, public comments and supporting documentation submitted, along with transcripts and exhibits from the public hearings. If materials included in the docket are copyrighted, they are listed on *www.regulations.gov* but are not reproduced there. MSHA also posted additional historical information and data on respirable coal mine dust on its Web site at the request of the public. MSHA's complete rulemaking docket, including studies, articles, and reports reviewed by MSHA in the development of the proposed and final rules, is available in hard copy for inspection at its headquarters office. Peer reviewed documents of the QRA for the proposed rule prepared by NIOSH and the Occupational Safety and Health Administration (OSHA) at MSHA's request, as well as the QRA for the proposed rule, have been available on the Black Lung Single Source Page on MSHA's Web site since the October 19, 2010 publication of the proposed rule at *http://www.msha.gov/S&HINFO/BlackLung/Homepage2009.asp*.

G. Government Accountability Office Activities

The Consolidated Appropriations Act, 2012, required that the Government Accountability Office (GAO) review and report on the data collection, sampling methods, and analyses MSHA used to support its proposal. In August 2012, GAO issued a report, ''*Mine Safety: Reports and Key Studies Support the Scientific Conclusions Underlying the Proposed Exposure Limit for Respirable Coal Mine Dust*'', which assessed the strengths and limitations of the data and the analytical methods MSHA used to support its proposal to lower the exposure limit for respirable coal mine dust. GAO concluded that the evidence MSHA used did support its conclusion that lowering the limit as proposed would reduce miners' risk of disease.

In May 2013, GAO was requested to conduct an additional analysis on MSHA's proposed rule. In April 2014, GAO issued a report, ''*Basis for Proposed Exposure Limit on Respirable Coal Mine Dust and Possible Approaches for Lowering Dust Levels*''. GAO examined (1) the extent to which MSHA used recent CWP trend data as a basis for its proposed exposure limit, and (2) expert views on ways to lower the dust levels in coal mines, including their associated advantages, disadvantages, and cost. In the report, GAO concluded that MSHA appropriately did not use recent trend data on CWP as a basis for its proposal to lower the permissible exposure limit for respirable coal mine dust. According to GAO, these recent data from NIOSH were inappropriate for this purpose because they do not include the types of detailed information about individual miners needed to estimate the likelihood that miners would develop CWP at different exposure levels, such as historical dust exposures. With the help of the National Academies, GAO convened a group of experts knowledgeable about underground coal mining and methods for reducing coal mine dust. GAO did not make any recommendations in this report. MSHA has reviewed both GAO reports and has determined that no further action is necessary.

MSHA has also reviewed the explanatory statement by the Chairman of the House Committee on Appropriations in the 2014 Appropriations Act regarding the coal mine dust rule. Consistent with the explanatory statement, MSHA has taken into consideration all relevant information and conclusions from the GAO study when addressing compliance assistance, training, or post-implementation needs in connection with the final rule. MSHA also considered all available technologies and work practices that would allow mine operators to reduce miners' exposures to respirable coal mine dust in a manner that is not economically prohibitive for the long-term viability of the affected mines, while reducing miners' exposure to respirable (coal) mine dust. (MSHA discusses feasibility in section III.C. of this preamble and in chapter IV of the REA.) MSHA intends to develop outreach materials related to implementation of the final rule and hold stakeholder seminars in locations accessible to the mining public. MSHA also intends to develop compliance assistance materials to ensure that operators have a sufficient number of certified persons to perform sampling and maintenance and calibration of CPDMs.

III. Discussion of the Final Rule

A. Health Effects

The health effects from occupational exposure to respirable coal mine dust consist of interstitial and obstructive pulmonary diseases. Miners develop Coal Workers' Pneumoconiosis (CWP) or nonmalignant respiratory disease (NMRD). There are no specific treatments to cure CWP or NMRD. These chronic effects may progress even after miners are no longer exposed to respirable coal mine dust resulting in increased disability and death. Other complications may follow, such as pulmonary and cardiac failure, that result in total disability and premature death.

The health effects from occupational exposure to respirable coal mine dust were discussed in the preamble to MSHA's proposed rule on Plan Verification published on March 6, 2003 (68 FR 10784). The literature referenced in that document pre-dated 1999. More recent literature, from 1997 to mid-2009 with occasional references to earlier papers, was discussed in the Health Effects section of the preamble to the proposed rule for this final rule (75 FR 64412, 64458).

Reduction of coal mine dust exposure is the only effective way to prevent either CWP or NMRD. Screening and surveillance programs detect trends and clusters of disease occurrences and allow secondary preventive intervention to slow the rate of progression in miners. Data from screening and surveillance programs provide estimates of the prevalence of occupational respiratory disease among working coal miners.

At the existing respirable coal mine dust standard of 2.0 mg/m^3, cases of CWP and NMRD continue to occur. In recent years, the prevalence of CWP has increased among experienced miners, and in some cases, CWP has progressed rapidly to the more advanced form–progressive massive fibrosis (PMF). The persistence of disease requires that additional action be taken to reduce coal mine dust exposures. The final rule will reduce occupational pulmonary disease, disability, and premature mortality in coal miners.

Although not a basis or rationale for the final rule, in May 2011, CWP prevalence in a West Virginia mining population was reported in the Governor's Independent Investigation into the April 5, 2010, explosion at the Upper Big Branch (UBB) mine in southern West Virginia (p. 32). This investigation reported the prevalence of CWP as determined by autopsies in the 29 miners who died. Twenty-four of the 29 miners had sufficient lung tissue available to make a determination relating to CWP. Prevalence of CWP in these 24 miners was 71 percent (17 of 24 miners), which compares with the national prevalence rate for CWP among active underground miners of 3.2 percent, and the prevalence rate in West Virginia of 7.6 percent. The ages of the UBB miners with CWP ranged from 25 to 61 years. Of the 7 miners who were not identified as having CWP, 4 had what was characterized as ''anthracosis'' on their autopsy reports. This term is often used in lieu of the term pneumoconiosis, or may refer to a black pigment deposition without the fibrosis and other characteristics needed to make a firm diagnosis of pneumoconiosis. Three of the 24 miners had no pneumoconiosis or anthracosis noted.

Of the 17 UBB miners with CWP, 5 had less than 10 years of experience as coal miners, while 9 had more than 30 years of coal mining experience. At least 4 of the 17 worked almost exclusively at UBB. All but 1 of the 17 with CWP began working in the mines after the 2.0 mg/m^3 respirable coal mine dust standard became effective in 1973.

There was support for the proposed rule from many commenters who agreed with MSHA's conclusions in the health effects and QRA discussions in the preamble to the proposed rule. Commenters supported the proposed rule which would lower the existing dust standards, require the use of continuous personal dust monitors (CPDMs), base compliance determinations on single, full-shift samples, address extended work shifts, redefine a normal production shift, and extend medical screening and surveillance. These commenters stated that there has been an alarming increase of CWP within the past 10 years and that MSHA's existing standards have not succeeded in eliminating Black Lung.

Other commenters stated that the proposed rule is not needed. Some stated that MSHA should better enforce its existing standards rather than propose new standards. Some stated that black lung rates have been declining since 2000 when MSHA and NIOSH began using enhanced surveillance methods and that the Agency used selective data to support the proposed reduction in the standard. Others stated that MSHA should only address the health concerns in particular areas of the country, which include Virginia, West Virginia, and Kentucky. Several commenters stated that the proposal is not based on the best available evidence but, rather, is based on faulty science and medical data. One commenter suggested that MSHA, NIOSH, industry, and labor conduct a nationwide study using the CPDM to determine what dust concentrations are protective and achievable. The comments are discussed below.

In the health effects section of the proposed rule, MSHA reported results from NIOSH publications and studies that were based on grouped surveillance data. In response to commenters requesting that the underlying demographic information be made available, MSHA points out that these results are part of NIOSH's coal miner surveillance data included in the proposed rule's hazard and risk assessment analyses. NIOSH posts summary surveillance data on U.S. coal miners on its Web site at *http://www.cdc.gov/niosh/topics/surveillance/ords/*. These data are generated based on the requirements of 42 CFR part 37, Specifications for Medical Examinations of Underground Coal Miners. Because of privacy protection laws, such as the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Privacy Act of 1974, and the Freedom of Information Act, MSHA cannot provide underlying personal identifying information.

Some commenters stated that the proposed rule was based on three data sources: The NIOSH 1995 Criteria Document, a literature update by NIOSH entitled ''Current Intelligence Bulletin 64, Coal Mine Dust Exposure and Associated Health Outcomes, A Review of Information Published Since 1995'' (''NIOSH CIB 64'') (USDHHS, CDC, NIOSH (2011a)), and various NIOSH papers on its enhanced surveillance studies. MSHA did not use the NIOSH literature update in the development of the proposed rule because it was published in April 2011 and, therefore, not final when the proposed rule was published on October 19, 2010. However, the NIOSH CIB 64 provides supplementary information that supports the final rule and is referenced later in this section of the preamble. NIOSH submitted CIB 64 to MSHA during the comment period for the proposed rule.

Some commenters stated that MSHA did not produce for independent analysis the underlying data from the NIOSH Criteria Document and X-ray program. One commenter stated that this is a violation of the Office of Management and Budget (OMB) and MSHA guidelines on data quality which prevented stakeholders from being able to comment on the scientific basis of the proposed rule.

The Data Quality Act or Information Quality Act directs OMB to issue guidelines to agencies to ensure and maximize the quality, objectivity, utility, and integrity of information that agencies maintain and disseminate (Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554)). MSHA has satisfied the requirements of OMB's 2002 data quality Guidelines, for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (36 FR 8452, February 22, 2002). MSHA has adopted well-established quality assurance techniques to ensure the quality of information disseminated. Information

is subject to internal agency quality control and audit, and any appropriate Department of Labor level review before being disseminated to the public. MSHA's Information Quality Guidelines are available on the Agency's Web site at: *http://www.msha.gov/infoquality/mshainfoquality.htm*.

MSHA explained in the preamble to the proposed rule that the proposal was developed in part on the recommendations in the 1995 NIOSH Criteria Document. NIOSH is the agency in possession of the underlying data associated with the Criteria Document and has posted data relevant to the Criteria Document on its Web site at *http://www.cdc.gov/niosh/topics/surveillance/ords/*. In accordance with Section 101(a) of the Mine Act, NIOSH submitted the Criteria Document to the Secretary of Labor for consideration in developing standards to reduce health risks associated with miners' exposure to respirable dust.

In addition, the Health Effects section in the preamble to the proposed rule contains a comprehensive inventory and summarizes key aspects of scientific literature and studies on the health effects from occupational exposure to respirable coal mine dust. Regarding the NIOSH X-ray data, NIOSH posts summary surveillance data on U.S. coal miners on the Web site previously noted at *http://www.cdc.gov/niosh/topics/surveillance/ords/*.

One commenter stated that using data from the NIOSH surveillance program violates the data quality guidelines because NIOSH self-selects the program participants and therefore the data is biased. The commenter also stated that data from the B-reader program is imprecise, inaccurate and biased because the B-reader program gives significant false-positive readings thereby exaggerating the incidence of CWP.

The relatively low participation rates, potential self-selection biases, and a lack of correspondent exposure histories for the individual miners involved limit the use of the NIOSH surveillance data as support for the Quantitative Risk Assessments. Additional discussion is included in Section III.B., Quantitative Risk Assessment, of the preamble. NIOSH instituted the B-reader program to ensure competency and consistency in radiographic reading by evaluating the ability of readers to classify a test set of radiographs. A discussion of NIOSH's B-reader program is included in Section III.A., Health Effects, of the preamble.

In developing the proposed rule, MSHA evaluated over 150 peer-reviewed papers as part of the Agency's health effects assessment (75 FR 64460, October 19, 2010), in addition to the data from MSHA's proposed rule on Plan Verification. The literature review focused on studies of morbidity and mortality among coal miners in many countries, including the United States, South Africa, Europe, Britain, China, Australia, Turkey, and Japan. This research evaluated the relationship between respirable coal mine dust exposure and the respiratory disease it causes. The research reported on the etiology of adverse respiratory diseases, including CWP, PMF, and NMRD, such as chronic obstructive pulmonary disease (COPD) and emphysema. The fact that similar results have been found in decades of research, covering a wide variety of populations at various respirable coal mine dust exposure levels and working conditions, supports the determination that exposure to respirable coal mine dust is a significant causal factor in the development of respiratory diseases in coal miners. The conclusion of MSHA's review of this research and of NIOSH's 2011 literature update is that chronic coal mine dust exposure causes respiratory health effects including CWP, PMF, COPD, and emphysema.

Recognition that long-term respirable coal dust exposure causes irreversible respiratory health effects has been accepted by the medical community for decades. On March 26, 1969, Charles C. Johnson, Jr., Administrator, Consumer Protection and Environmental Health Service, Public Health Service, U.S. Department of Health, Education, and Welfare, testified before the General Subcommittee on Labor, and presented remarks of the Surgeon General addressing the level of medical understanding about the etiology of CWP at that time.[4] Johnson testified that CWP is a chronic chest disease caused by the accumulation of fine coal mine dust particles in the human lung that, in its advanced forms, leads to severe disability and premature death.

Johnson's testimony also pointed out that, by 1969, medical researchers in both Britain and the United States had repeatedly shown that coal miners suffer from more respiratory impairment and respiratory disability than the general population. These respiratory problems were frequently accentuated by chronic bronchitis and emphysema.

Estimates of the severity of disease risk at that time were derived from British research. This research provided the only quantitative exposure-response relationship available in 1969 and supported lowering the respirable coal mine dust standard from 3.0 mg/m^3 to 2.0 mg/m^3. Adoption of the 2.0 mg/m^3 standard was believed to be protective against the risk of disability and premature mortality that accompanies PMF. However, NIOSH has noted that as more research was completed over the next 25 years, this assumption turned out to be inaccurate (NIOSH CIB 64, 2011a).

In 1995, NIOSH published ''Criteria for a Recommended Standard—Occupational Exposure to Respirable Coal Mine Dust'', an analysis of research up through the early 1990s that further investigated the etiology of CWP and other adverse health effects associated with respirable coal mine dust exposure. NIOSH recommended that the federal coal mine dust limit be reduced to 1.0 mg/m^3. This recommendation was based on risk estimates of CWP derived from two NIOSH studies of U.S. coal miners. Predictions were derived from each study for a working lifetime of 45 years at two exposure levels: 2.0 mg/m^3 and 1.0 mg/m^3. The recommendation was also based on information that predicted excess lung function decrements following working lifetime exposures to 2.0 mg/m^3 and 1.0 mg/m^3 respirable coal mine dust. NIOSH also evaluated information from other epidemiologic studies in reaching its 1995 recommendations. NIOSH estimated, and MSHA concurs, that miners exposed to respirable coal mine dust at the existing 2.0 mg/m^3 standard are at significant risk of developing adverse health effects, such as CWP and NMRD, including COPD and emphysema.

Some commenters disagreed with NIOSH surveillance and research results as the basis for the proposed rule. These commenters stated that the prevalence of CWP and PMF in U.S. coal miners was overstated, surveillance was incomplete, and the 1.0 mg/m^3 standard was not justified. They presented various analyses of the NIOSH studies and submitted for the rulemaking record a NIOSH study that was published after the proposed rule (Suarthana et al., 2011). The Suarthana study is discussed in this Health Effects section of the preamble.

Some commenters suggested that MSHA should collect data from a representative or mandatory surveillance program and study the data in a scientifically sound manner to better understand the incidence of CWP.

MSHA believes that this program already exists in the National Coal Workers Health Surveillance Program (NCWHSP, also known as CWHSP) that is administered by NIOSH. MSHA has

[4] 91st Congress House of Representatives Report, 1st Session No. 91–563, Federal Coal Mine Health and Safety Act, October 13, 1969.

used data generated from this program in the development of both the proposed and final rules.

Occupational health surveillance tracks occupational injuries, illnesses, hazards, and exposures to improve worker safety and health and to monitor trends and progress over time. Surveillance includes both population- or group-based activities and individual or case-based activities. Worker screening and monitoring detects early disease in high-risk individuals.

The purpose of federal and state surveillance programs for chronic lung diseases, such as CWP, PMF, and NMRD, is to identify not only cases of disease, but also conditions under which the cases develop in order to improve disease control and prevention. There are three levels of prevention. Primary prevention in the case of dust-related lung disease includes reducing exposure to dust, generally through engineering controls. Secondary prevention focuses on early detection of disease and intervention in order to slow or eliminate progression. Much of the medical surveillance conducted by NIOSH is secondary prevention. Tertiary prevention involves miners seeking further medical care only after they have symptoms, progression to later stages is more likely, and the primary treatment is to manage symptoms of disease since it is too late to prevent disease.

There is a spectrum of respiratory disease development in coal miners exposed to respirable coal mine dust. Pathologic changes occur during the subclinical stage of disease development that are not detectable by either spirometry or chest x-ray (CWP 0/0). For this reason, all miners should have an initial medical examination to establish a baseline health status on which future medical surveillance can be compared to determine disease presence or progression. NIOSH and many of the research papers on which the proposed health effects assessment was based use CWP 1/0+ as the category where disease progression is evident; many of these miners may not have overt symptoms, but the chest x-ray shows signs of fibrotic changes. The use of this CWP category as a sign of the development of minimal illness dates from the 1969 Coal Act, where the Surgeon General recommended that miners be removed from dusty environments as soon as they showed ''minimal effects'' of dust exposure on chest-x-ray, i.e., pinpoint, dispersed micro-nodular lesions. Many miners may also report symptoms of developing respiratory disease, such as chronic cough, phlegm production, wheezing, and shortness of breath.

Many comments focused only on detection of clinical disease (tertiary prevention), once disease has advanced well beyond the clinical horizon when symptoms appear (CWP category 2/0+). One commenter submitted an analysis of CWP mortality in a subgroup of miners with advanced disease at the CWP 2/0+ level. While this analysis may help to understand the etiology of advancing disease, it does not identify how the disease process begins or how to prevent disease from developing. Miners with this level of disease present pulmonary symptoms and are likely to suffer from disease progression.

The focus of federal coal workers' health surveillance programs is on prevention of clinical disease, not detection of disease that has progressed well beyond the clinical horizon. The Coal Workers' X-Ray Surveillance Program (CWXSP) was established under the Federal Coal Mine Health and Safety Act of 1969, as amended by Section 203(a) of the Mine Act (30 U.S.C. 843(a)). The CWXSP Program, which is part of the National Coal Workers Health Surveillance Program (NCWHSP), began in 1970. It is administered by NIOSH. The CWXSP provides all underground coal miners with periodic, x-ray examinations, at no cost to the miner, at least every five years (42 CFR part 37).

The National Coal Study (NCS) was a long-term epidemiologic study, limited to workers in a selected group of mines with various seam heights, mining methods, coal types, and geographic locations. Many of the published peer-reviewed epidemiological studies reported in the proposed rule's health effects section grew out of the NCS. Commenters suggested that many of NIOSH's studies were incomplete due to design or other limitations and suggested that a detailed, nationwide epidemiological study be conducted based on mandatory screening before any action to lower the respirable dust standard is initiated.

MSHA does not believe that a nationwide epidemiological study, based on mandatory screening, as suggested by the commenter is needed before regulatory action is taken be reduce the respirable dust standard. Underground coal miners in the United States have been studied since before the 1969 Coal Act by the Public Health Service and State health agencies. Those studies were the basis for the current surveillance programs in this country. Numerous pre-Coal Act studies and studies since that time have characterized the respiratory system's response to various levels of respirable coal mine dust, a known fibrogenic dust. Significant levels of adverse lung diseases are continuing to develop in coal miners who have been exposed to respirable coal mine dust at the current standard.

Some commenters stated that x-rays are insensitive for detecting CWP and that surveillance programs suffer from inconsistent reading of the x-rays.

Early changes due to CWP are frequently identifiable on a high quality chest x-ray before the miner seeks medical attention due to symptoms. NIOSH instituted the B-reader program to ensure competency and consistency in radiographic reading by evaluating the ability of readers to classify a test set of radiographs. This creates and maintains a pool of qualified readers having the skills and ability to provide consistent and accurate ILO classifications. B-readers must retest every 4 years to maintain their B-reader status. A reader who fails the retest must take and pass the original approval examination before the expiration of the 4-year approval period in order to retain B-reader status. The implementation of this program in the mid-1970s, the update of the program to adjust to the ILO guidelines in 1980, and the revised ILO guidelines in 2000 and 2011 ensure B-reader consistency in reading x-rays.

In order to preserve continuity and consistency in the classifications, the images used in reproducing the 2011 ILO version of the standard radiographs are identical to those used for the 1980 set of standard radiographs, aside from one image which demonstrates pleural abnormalities. The ILO did endeavor to improve image quality in the 2000 set by using advanced computer imaging techniques. The NIOSH CWXSP requires that readers submit classifications adhering to the 2011 Revised Edition of the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconiosis. The sets of standard images used in the 2011 and 1980 classifications are nearly identical, and thus it is the individual reader's choice which of these two sets of standard radiographs to use. However, because the quality of the 2011 standard radiographs has been enhanced by the ILO Guidelines, NIOSH recommends that readers use the 2011 standard radiographs for classifying films for NIOSH programs and studies (*http://www.cdc.gov/niosh/topics/chestradiography/breader-info.html*).

Classifying films can be variable, especially in lower disease categories, with differences of opinion between B-readers and by the same B-reader at different times (Attfield et al., 2007; Naidoo et al., 2004). To account for this

variability, the ILO classification system allows readers to determine profusion severity by indicating the most likely category and also by indicating a neighboring category that might also be valid. For example, a score of 1/2 means the disease state is classified as category 1, but could also be considered category 2. Another means of compensating for variability is to have a panel of readers interpret films by consensus rather than using a single reader. When the ILO system is used for surveillance and screening purposes, it has been demonstrated to be a valid means for identifying trends and disease clusters (Attfield et al., 2007; Naidoo et al., 2004; NIOSH, 2008). The CWXSP uses a profusion score of 1/0+ as indicative of CWP development.

Section 203(a) of the Mine Act specifically requires that operators provide periodic chest x-ray examinations to underground coal miners, and such other tests as the Secretary of Health and Human Services deems necessary to supplement the x-rays (30 U.S.C. 843(a)). In addition to pneumoconiosis apparent on x-rays, miners are at increased risk for the development of COPD. Chest x-rays alone cannot provide a measure of airflow obstruction and, therefore, often miss important lung disease. Spirometry, a simple breathing test, is an additional component of the health assessment of miners that is particularly useful. NIOSH has recommended periodic medical history and spirometry tests for both surface and underground coal miners since 1995, to facilitate preventive actions, increase miners' participation in programs for early detection of disease, and improve the derivation of representative estimates of the burden, distribution, and determinants of occupational lung disease in relation to coal mining in the United States. Final § 72.100 requires spirometry testing of both underground and surface miners.

A few commenters stated that a recent study by Suarthana et al. (2011) states that dust exposure is a poor predictor of CWP prevalence.

In response, MSHA notes that dose-response relationships between cumulative dust exposure and cases of respiratory diseases have been studied by NIOSH as part of the National Coal Study. The Suarthana study stated that: ''Epidemiological modeling of CWP prevalence and incidence undertaken on underground coal miners in the USA and elsewhere has shown that the main predictor of CWP is cumulative exposure to respirable coal mine dust.''

As stated previously, NIOSH studies the causes and consequences of coal-related respiratory disease and, in cooperation with MSHA, carries out a program for early detection of coal workers' pneumoconiosis. These activities are administered through the CWXSP.

In the early 2000s, MSHA with assistance from NIOSH piloted the Miners' Choice Program (MCP) to offer all coal miners the opportunity to participate in the CWXSP by having medical staff travel to mines or other areas to conduct medical surveillance of mining populations at no cost to the mine operator. The MCP used a mobile medical examination unit to bring the medical exams, including chest x-rays, to the miners in remote areas to provide early detection of dust-related pulmonary disease. MSHA wanted to determine the state of miner health because participation in the CWXSP decreased from the high of 100% in 1970 to 1974 to a low of 20.6% in 1990 to 1994 (Table III–2). MSHA found that participation rates increased to 25.5% in 1995 to 1999; 34.1% in 2000 to 2004; and 41.7% in 2005 to 2009. MSHA further found that as more miners were screened, the prevalence of CWP detected fluctuated. CWP was detected in 2.0% of the miners who were x-rayed from 1995 to 1999; 3.6% from 2000–2004; and 2.7% from 2005 to 2009 (Table III–1). Although commenters stated that this increase was not real, additional miner participation resulting from the enhanced surveillance identified more cases of CWP that otherwise would have gone undetected.

The Miners' Choice Program was expanded into the Enhanced Coal Workers' Health Surveillance Program (ECWHSP) in March 2006 by NIOSH to continue increasing miner participation by providing additional respiratory health evaluations to coal miners. The ECWHSP uses a mobile medical examination unit to bring the medical exams to the miners in the field to provide early detection of dust-related pulmonary disease and target additional areas for prevention. This program offers lung function testing in addition to chest x-rays as part of the medical examination and asks miners to fill out occupational and health surveys.

The National Coal Workers' Autopsy Study, which is part of the NCWHSP, provides autopsies of deceased coal miners at the request of miners' next-of-kin at no cost to the family. Autopsy results may help support a black lung benefit claim and also help scientists and medical doctors learn more about CWP. Doctors collect standardized lung specimens during autopsies to be used in ongoing scientific research as well as to provide information to the next-of-kin regarding the presence and extent of CWP in the lungs of the deceased miner. Because one basic reason for the post-mortem examination is research (both epidemiological and clinical), a minimum of essential information is collected regarding the deceased miner, including occupational history and smoking history. The data collected are used by scientists for research purposes in defining the diagnostic criteria for pneumoconiosis and in correlating pathologic changes with exposures and x-ray findings.

NIOSH reports overall prevalence of CWP 1/0+ across all MSHA districts, as well as a national prevalence (Table III–1). These numbers are based on the average number of miners employed per time period (1995–1999, 2000–2004, and 2005–2009) and the number x-rayed per time period. When more information is available from complete medical examination records, NIOSH refines the estimates as in the case with reporting CWP prevalence based on tenure, i.e., the length of time worked in coal mining (Table III–2).

During the 2005 to 2009 period, for example, over 18,500 active underground coal miners were screened as part of the CWXSP. As shown in Table III–1, this is approximately 42% of all active underground miners (NIOSH, 2011—Work-Related Lung Disease Surveillance System, CWXSP. ref. no. 2011T02–17, May 2011). Active miners from all MSHA districts participated in this screening.

Some commenters stated that the NIOSH surveillance programs are not ''well-established scientific processes for data collection'' and that black lung rates have declined since 2000.

NIOSH surveillance of CWP started in 1970 and continues today using the same case definition of CWP 1/0+ (Tables III–1 and III–2). The number of miners participating in the program has fluctuated through the years. NIOSH's active surveillance programs have reached additional miners, as shown in Table III–2; the percentage participating in the period from 2005 to 2009 was 41.7% as compared to a low of 20.6% in the period from 1990 to 1994. In addition, the number of underground coal miners in the United States has declined from over 150,000 in the 1975–1979 time period to under 45,000 in the 2005–2009 time period. The number of miners examined that provided tenure data on the health questionnaire forms was approximately 85,000 in the 1970–1974 time period to approximately 11,000 in the late 2000s.

Miners who stop working in mining are lost to follow-up. Since their health status is not known, surveillance of only

active miners may underestimate the prevalence of disease. Cohen et al. (2008) reported that disease progression continues after exposures stop, increasing lung function impairment and pneumoconiosis levels in miners once they leave employment (i.e., ex-miners and retired miners). Coal mine dust clearance from the lungs is slow and incomplete, allowing continued contact between the cytotoxic dust and lung tissues. This progression of disease after retirement from coal mining (i.e., after exposure ceased) was also observed in other countries (Cohen et al., 2008). Ex-miners displayed higher levels of respiratory disease than current miners illustrating the progression of CWP to PMF even after exposure ceased (Naidoo et al., 2005 and 2006). Miners with advanced disease are forced to retire because they can no longer perform mining tasks (Cohen et al., 2008).

Exposures, as estimated by MSHA inspector samples, have decreased since passage of the 1977 Mine Act from a mean of 0.796 mg/m^3 (with 18.7% of samples above the 2.0 mg/m^3 standard) in 1979 to 0.468 mg/m^3 (with 3.2% of samples above the 2.0 mg/m^3 standard) in 2003 at underground coal mines; and from 0.384 mg/m^3 (5.0% above the 2.0 mg/m^3 standard) in 1979 to 0.148 mg/m^3 (0.8% above the 2.0 mg/m^3 standard) in 2003 at surface coal mines (NIOSH, 2011—Work-Related Lung Disease Surveillance System, CWXSP. ref. no. 2007T02–14; *http://www2.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=529&GroupRefNumber=T02-14*). As exposures were reduced, the prevalence of CWP 1/0+ was also reduced, on average. Prevalence information on CWP 1/0+ among miners from the NCWHSP, reported on NIOSH's Web site, was 2.0% in the 1995–1999 time period; 3.6% in the 2000–2004 time period; and 2.7% in the 2005–2009 time period (Table III–1). When tenure is considered, however, the prevalence increased to 2.6%, 4.1%, and 4.1%, respectively (Table III–2). Table III–2 shows that disease progression continues even after exposures were reduced.

Table III-1 – CWXSP: Estimated Number of Actively Employed Workers at Underground Mines, Number of Miners Examined, and Number of Miners with CWP, 1995–2009, Including Those With and Without Tenure Information

MSHA Coal Mining District	1995–1999				2000–2004				2005–2009			
	Average Number Employed	No. X-Rayed	No. with CWP	% with CWP	Average Number Employed	No. X-Rayed	No. with CWP	% with CWP	Average Number Employed	No. X-Rayed	No. with CWP	% with CWP
District 01 (Anthracite coal mining regions in Pennsylvania)	248	26	-	-	204	63	7	11.1	119	58	6	10.3
District 02 (Bituminous coal mining regions in Pennsylvania)	5,356	1,448	15	1.0	5,261	1,777	38	2.1	4,370	1,490	32	2.1
District 03 (Maryland, Ohio, and Northern West Virginia)	6,278	1,058	18	1.7	6,467	1,507	93	6.2	5,911	1,764	38	2.2
District 04 (Southern West Virginia)	9,071	891	46	5.2	8,449	1,690	162	9.6	8,751	1,380	138	10.0
District 05 (Virginia)	4,627	908	60	6.6	4,101	1,389	130	9.4	2,982	776	70	9.0
District 06 (Eastern Kentucky)	5,324	610	38	6.2	5,408	634	42	6.6	4,707	453	60	13.2
District 07 (Central Kentucky, North Carolina, South Carolina, and Tennessee)	4,627	614	26	4.2	4,629	371	25	6.7	3,659	583	50	8.6
District 08 (Illinois, Indiana, Iowa, Michigan, Minnesota, Northern Missouri, Wisconsin)	4,627	2,046	13	0.6	4,882	3,776	37	1.0	4,549	4,891	19	0.4
District 09 (All States west of the Mississippi River, except for Minnesota, Iowa, and Northern Missouri)	3,526	1,810	14	0.8	4,018	3,127	34	1.1	4,338	3,838	36	0.9
District 10 (Western Kentucky)	2,573	688	5	0.7	2,301	1,332	18	1.4	2,534	2,354	26	1.1
District 11 (Alabama, Georgia, Florida, Mississippi, Puerto Rico, Virgin Islands)	4,043	2,731	22	0.8	3,253	1,034	16	1.5	2,626	976	17	1.7
TOTAL	**50,301**	**12,830**	**258**	**2.0**	**48,971**	**16,700**	**602**	**3.6**	**44,546**	**18,563**	**492**	**2.7**

"–" indicates fewer than five miners examined or with CWP (to protect identification of miners screened who have been diagnosed with disease because of privacy laws).

Note: The average number employed during the period, based upon quarterly reports by coal mine operators to MSHA. Because of hiring and layoffs, the total number of individuals who worked at underground mines in any period may exceed the average employment.

Source: CWP data from NIOSH's CWXSP. Coal District codes from MSHA. *http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=2551&GroupRefNumber=T02-17.*

TABLE III–2—CWXSP: NUMBER AND PERCENTAGE OF EXAMINED UNDERGROUND MINERS WITH CWP (ILO CATEGORY 1/0+) BY TENURE INFORMATION PROVIDED ON MEDICAL QUESTIONNAIRE, 1970–2009

		Time Period							
		1970–1974	1975–1979	1980–1984	1985–1989	1990–1994	1995–1999	2000–2004	2005–2009*
	Average No. Employed at Underground Mines.	104,705	150,475	131,113	91,122	69,424	50,319	39,544	44,546
	Number of X-rays	105,841	99,610	45,797	19,049	14,283	12,674	16,644	18,563
	% of Miners X-rayed	101.1	66.2	34.9	20.9	20.6	25.2	42.1	41.7
	% of Miners X-rayed That Reported Tenure Information.	80.9	59.1	78.1	67.3	82.1	71.8	82.9	60.4
Tenure (years in underground mining).	Total No. of Miners Examined	85,644	58,864	35,787	12,816	11,727	9,100	13,794	11,211
	Total No. with CWP	13,288	2,887	1,083	460	424	233	570	455
	Total % with CWP	15.5	4.9	3	3.6	3.6	2.6	4.1	4.1
0–9	No. of Miners Examined	36,303	43,296	23,190	5,063	1,638	806	4,261	4,281
	No. with CWP	803	475	186	44	20	7	47	27
	% with CWP	2.21	1.1	0.8	0.9	1.2	0.9	1.1	0.6
10–14	No. of Miners Examined	6,464	5,460	7,050	4,345	2,968	642	562	311
	No. with CWP	586	328	166	111	68	7	10	**
	% with CWP	9.1	6	2.4	2.6	2.3	1.1	1.8	1
15–19	No. of Miners Examined	6,210	2,705	2,253	2,071	4,037	1,778	1,156	235
	No. with CWP	910	298	139	118	125	34	37	5
	% with CWP	14.7	11	6.2	5.7	3.1	1.9	3.2	2.1
20–24	No. of Miners Examined	8,769	2,044	993	683	2,178	3,475	3,100	958
	No. with CWP	1877	380	102	63	115	86	152	47
	% with CWP	21.4	18.6	10.3	9.2	5.3	2.5	4.9	4.9
25+	No. of Miners Examined	27,898	5,359	2,301	654	906	2,399	4,715	5,426
	No. with CWP	9,112	1,406	490	124	96	99	324	376
	% with CWP	32.7	26.2	21.3	19	10.6	4.1	6.9	6.9

* Number from Table III–1, 2005–2009 number of miners X-rayed.
** Indicates fewer than 5 miners with CWP.
Source: CWP data from NIOSH's Coal Workers' X-ray Surveillance Program (CWXSP). Ref. No. 2007F02–06, 2011T02–12.

Some commenters stated that the prevalence of disease was overstated in the proposed rule. Annual prevalence data are reported on NIOSH's Web site and summarized in Table III–3 for 1970 through 2009. Prevalence in 1970, the first year of surveillance, was 2,162 cases (30.5%). The respirable dust standard at the time was 3.0 mg/m³. As shown in Table III–3, the percent of miners show a downward trend until after 1999. In the last decade, the observed prevalence of CWP 1+ in examined miners has varied from a low of 46 cases (2.6%) in 2004 to 167 cases (5.8%) in 2006. The number of miners examined in 2005 was only 706 miners; 37 of them, or 5.2%, were diagnosed with CWP 1/0+. In comparison in 2000, 6,264 miners were examined and 242 (3.9%) were diagnosed with CWP 1/0+.

TABLE III–3—CWXSP: NUMBER AND PERCENTAGE OF EXAMINED UNDERGROUND MINERS (WHO PROVIDED TENURE INFORMATION) WITH COAL WORKERS' PNEUMOCONIOSIS (ILO CATEGORY 1/0+) YEARLY TOTALS, 1970–2009, (USING DATA FROM TABLE III–2)

Year	Total No. of Miners Examined	Total No. with CWP	Total % with CWP
1970	7,085	2,162	30.5
1971	30,703	5,154	16.8
1972	6,916	717	10.4
1973	8,001	961	12.0
1974	32,939	4,294	13.0
1970–1974	85,644	13,288	15.5
1975	8,779	482	5.5
1976	7,581	174	2.3
1977	7,870	194	2.5
1978	10,235	386	3.8
1979	24,399	1,651	6.8
1975–1979	58,864	2,887	4.9
1980	7,532	303	4.0
1981	9,201	234	2.5
1982	4,536	80	1.8
1983	4,833	133	2.8
1984	9,685	333	3.4
1980–1984	35,787	1,083	3.0
1985	3,056	69	2.3
1986	848	30	3.5
1987	2,867	92	3.2
1988	3,589	168	4.7
1989	2,456	101	4.1
1985–1989	12,816	460	3.6
1990	891	61	6.8
1991	1,036	38	3.7
1992	3,578	140	3.9
1993	3,640	95	2.6
1994	2,582	90	3.5
1990–1994	11,727	424	3.6
1995	1,920	57	3.0
1996	607	27	4.4
1997	1,625	32	2.0
1998	883	31	3.5
1999	4,065	86	2.1
1995–1999	9,100	233	2.6
2000	6,264	242	3.9
2001	2,618	104	4.0
2002	1,723	109	6.3
2003	1,423	69	4.8
2004	1,766	46	2.6
2000–2004	13,794	570	4.1
2005	706	37	5.2
2006	2,877	167	5.8
2007	2,923	82	2.8
2008	3,457	111	3.2
2009	1,248	58	4.6
2005–2009	11,211	455	4.1

Source: CWXSP—Coal Workers' X-ray Surveillance Program—Ref. No. 2011T02–12, *http://www2a.cdc.gov/drds/WorldReportData.*

Some commenters, who stated that current risks of CWP were overstated in the proposed rule, suggested that recently observed cases were due to high coal ranks and/or excessive silica exposures associated with geographically limited areas within the United States. These commenters stated that the increase in prevalence of CWP is distinctly regional and that the proposed 1.0 mg/m³ standard should not apply to regions that do not have an increase. Some of these commenters also said that CWP has been eliminated in the Midwest (i.e., Indiana, Illinois, and Western Kentucky) and pointed out that MSHA District 8 has a high participation rate in the CWXSP and the

lowest CWP rate in the country. A few commenters acknowledged that the prevalence of PMF has increased but, citing Wade et al. (2010), attributed the increase to greater silica exposure from drilling through rock. Some commenters also stated that MSHA should have examined its own silica exposure data before concluding that recently observed cases of CWP were caused by respirable coal mine dust exposures under the existing standard.

As noted in the proposed rule (75 FR 64462–64463), MSHA is aware that some cases of rapidly progressive CWP have been detected in a small percentage of miners diagnosed initially with CWP 1/0+; however, these cases are a small proportion of the larger group of miners across the U.S. who have been diagnosed with CWP 1/0+ that need to be studied to determine the reasons for the rapid progression (see Antao et al. 2005, 2006; Attfield and Petsonk, 2007).

The Wade et al. paper cited by commenters reported on a retrospective chart review of a group of 138 coal miners with PMF who were approved for benefits by the West Virginia State Occupational Pneumoconiosis Board between January 2000 and December 2009. The mean age of this group of miners was 52.6 years (40–77 years) and they had an average tenure of 30 years (7.5 to 47 years). Miners who worked as continuous mining machine operators or roof bolting machine operators had the highest occurrence of PMF (41% and 19%, respectively). The time of progression to PMF was studied in a subgroup of these miners when normal x-rays were available for comparison to x-rays showing advanced disease. In this subgroup of 43 miners, the time between the last normal chest x-ray and one showing advanced disease averaged 12.2 years (5 to 27 years). No data on quartz exposure or respirable coal mine dust was provided by Wade et al.

McCunney et al. (2009) noted in their review of epidemiology literature that coal dust has been described as ''able to mask the fibrogenic activity of quartz'' and that there are ''distinct pathological differences between simple pneumoconiosis of CWP and silicosis.'' Researchers initially thought that the active agent in respirable coal mine dust that was responsible for CWP development was quartz. However, research reported a poor correlation between radiological evidence of CWP and quartz concentration in the corresponding coal dust; there was no pattern between the quartz content of mixed dust and the probability of developing simple pneumoconiosis at quartz levels averaging 5 percent. Based on the collective weight-of-evidence of human epidemiology studies, animal investigations and *in vitro* evaluations contained in the preambles to the proposed rule (75 FR 64458, October 19, 2010) for this final rule and to the 2003 proposed rule on Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust (68 FR 10837, March 6, 2003), it is apparent that quartz is not the predominant factor in the development of CWP. In fact, the results of large-scale epidemiological studies in Germany, the United Kingdom, France, and the United States indicate varying levels of risk of CWP, based on the type of coal regardless of silica content.

McCunney et al. (2009) also reported on the results of research conducted by Miller et al. (1995) in British coal miners. These miners participated in the Pneumoconiosis Field Research (PFR) program. As reported in the preamble to the proposed rule (75 FR 64462), that program, in addition to periodic chest x-rays, also collected separate industrial hygiene data that quantified typical concentrations of respirable dust and quartz for a variety of occupations within the mines. These exposure measurements were used to determine individual exposure profiles for participating miners. Miller et al. suggested that the rapid progression in radiological abnormalities, their relationship with quartz exposure estimates, and the strength of their relationship with lung function decrements resembled classical silicosis rather than CWP in a subpopulation exposed to quartz concentrations of about 10% at one specific mine. According to McCunney et al., however, recorded progressions of CWP to PMF in such cases may have resulted from misdiagnosing silicosis as CWP. McCunney et al. also reported similar findings of misdiagnosis in a case/control study of British coal miners that showed an effect of unusually high levels of quartz exposure on rapid CWP-progression.

The preamble to the proposed rule reported that NIOSH researchers determined that cases of rapidly progressive CWP are sentinel health events (75 FR 64468). Antao et al. (2005) identified a total of 886 cases of CWP among 29,521 miners examined from 1996 to 2002 in the CWXSP. CWP progression was evaluated in 783 of these miners; 277 (35.4%) were cases of rapidly progressive CWP, including 41 with PMF. The miners with rapidly progressive CWP were younger than miners without rapid progression, worked in smaller mines, and reported longer mean tenure in jobs involving work at the face (production area) of the mine. Many of these cases of rapidly progressive CWP developed in miners from eastern Kentucky and western Virginia. Eight cases showed progression of one subcategory over 5 years, 156 cases had progression equivalent to two or three subcategories over a 5-year period, and 72 cases had progression equivalent to more than three subcategories over a 5-year period.

Rounded opacities were the primary shape/size in 73% of the rapidly progressive cases compared to 50% in the non-rapidly progressive cases. Overall, the miners with rapidly progressive CWP were somewhat younger (mean age 48) than the remaining miners evaluated (mean age 51), but were similar in mean work tenure (27 to 28 years). Rapidly progressive cases were more likely to have worked in smaller mines than in larger mines. Rapidly progressive CWP cases reported longer mean tenure in jobs involving work at the face of the mine (19 years), compared to miners without rapid progression (17 years). These particular cases occurred in miners from eastern Kentucky and western Virginia (Antao et al., 2005).

Clusters of newly identified cases of advanced pneumoconiosis were surveyed in 2006 by ECWSHP teams that visited two counties in Virginia (Antao et al., 2006) and in eastern Kentucky and southwestern Virginia (Attfield and Petsonk, 2007). In March and May of 2006, a total of 328 underground coal miners employed in Lee and Wise counties in Virginia were examined. This was 31% of the estimated 1,055 underground miners in those counties. The mean age of examined miners was 47 years, and their mean tenure working in underground coal mines was 23 years. A total of 216 (66%) had worked at the coal face for more than 20 years; and 30 of the 328 miners (9%) had radiographic evidence of pneumoconiosis (i.e., category 1/0 or higher profusion of small opacities). Of these, 11 miners had advanced cases of CWP, including five with large opacities consistent with PMF and six with coalescence of small opacities on a background profusion of category 2. Among the 11 miners with advanced cases, the mean age was 51 years (range: 39–62 years), the mean tenure in underground coal mines was 31 years (range: 17–43 years), and the mean number of years working at the coal face was 29 years (range: 17–33 years). All 11 advanced cases met the radiographic criteria for rapidly progressive CWP. All reported at least one respiratory symptom (i.e., productive cough, wheeze, or shortness

of breath), the most common being shortness of breath (dyspnea). Four of the nine who underwent spirometry testing had abnormal results (Antao et al., 2006).

In a separate ECWSHP survey in 2006, pneumoconiosis rates were determined for 26 sites in seven counties in eastern Kentucky and southwestern Virginia (Attfield and Petsonk, 2007). A total of 975 (20%) of the 4,897 active underground miners in the counties participated; 37 (4%) of those tested had advanced pneumoconiosis. Medical records indicated that all 37 miners with advanced disease had worked underground for at least one interval of 10 years without a chest x-ray; 22 (59%) had worked for at least one interval of 20 years without a chest-ray, and 2 others had worked for more than 30 years without a chest x-ray. Attfield and Petsonk found that miners who worked at the coal face (not typically associated with silica dust exposure) and roof bolting machine operators (typically associated with higher silica dust exposure) with similar tenure underground (about 30 years) developed PMF at high rates. PMF was identified in 64% of the face workers and 42% of the roof bolting machine operators. Attfield and Petsonk examined disease development patterns in this population of miners since silicosis can develop faster than CWP. They found that 1 of 26 roof bolting machines operators (4%) progressed to PMF in less than 10 years, compared with 2 of 11 coal-face workers (18%).). Silica exposure was identified as only one of several factors possibly related to rapid disease progression in this population. The authors listed various potential explanations for the continued occurrence of advanced pneumoconiosis: The respirable dust standard may have been too high; failure to comply with or enforce respirable dust regulations; lack of adjusting disease prevention practices to accommodate changes in mining practices; and missed opportunities for miners to be screened for early disease. The 3 mm rounded opacities may or may not be associated with silica.

Suarthana et al. (2011) cited references by Laney et al. (2009) and Laney and Attfield (2010). These papers attempted to further illustrate what factors may be involved in the rapid progression of CWP to PMF by focusing on the presence of a specific type of x-ray findings frequently associated with silicosis (rounded pneumoconiotic opacities exceeding 3 millimeter (mm)—r-type) (Laney et al., 2009) and mine size (Laney and Attfield 2010) in U.S. coal miners who participated in the CWXSP. Laney examined NIOSH CWXSP data between 1980 to 2008 (2,868 radiographs showing ILO category 1 or greater small opacities out of a total of 90,973 available) found that r-type opacities, frequently associated with silica exposure, occurred in 201 radiographs representing 0.22% of the total number of radiographs examined. The 3 mm rounded opacities may or may not be associated with silica. It is a matter of sensitivity and specificity. It is not a silica-specific finding, but is often or frequently associated with silica exposure. Laney and Attfield examined NIOSH CWXSP data collected between 1970 and 2009 and evaluated the effect of mine size on the development of CWP and PMF. They found that miners working in small mines (fewer than 50 employees) had a significantly higher prevalence of CWP compared to miners who worked in large mines (with 50 or more employees). They reported that miners from small mines were five times more likely to have radiographic evidence of PMF (1% of miners) compared to miners from larger mines (0.2%). The Laney and Attfield (2010) study was the first to directly examine the relationship between miners' respiratory health and mine size in the U.S. They concluded that: there are distinct differences between large and small mines that potentially influence the amount and type of exposures; and the effect of small mine size on development of CWP risk was consistent across all mining states and was not confounded with coal rank or geographical region. They also found the small mine effect on CWP in other states, not just in thin seam mines that are primarily concentrated in Kentucky, Virginia, and West Virginia.

Other epidemiological studies on U.S. coal miners, discussed in the proposed rule (75 FR 64459), conclude that the rank of coal mined influences CWP rates among coal workers, suggesting that coal's carbon content is a factor in CWP risk (Huang et al., 2005, McCunney et al., 2009). According to these studies, coal from districts with lower rates of CWP (while considering similar levels of exposure to coal, both in concentration and duration) show that coal high in bioavailable iron (BAI) is associated with the highest risk of CWP. Results of *in vitro* studies with human and animal cell lines are consistent with the epidemiological data that suggest that risk of CWP is not based on quartz, but most likely due to the concentration of BAI. *In vitro* studies provide further support for the role of iron in the inflammatory process associated with CWP. (Huang et al., 2005; Zhang and Huang 2005; Zhang et al., 2002).

Huang evaluated the quality of coal, including BAI, as determined by the U.S. Geological Survey database of coal quality, across seven regions of the U.S. These data were compared to data from the first National Study of Coal Workers' Pneumoconiosis. The authors found that CWP prevalence was correlated with pyritic sulfur or total iron in the coals but not with coal rank or silica. They concluded that a significant correlation between CWP prevalence and levels of BAI exist, moderated by certain minerals in the coals that can interact and contribute to different levels of BAI and, therefore, different levels of CWP and associated COPD.

Although CWP and silicosis may have some similar clinical patterns, their etiology is different (McCunney et al., 2009; 75 FR 64458, October 19, 2010). Recent studies on U.S. coal miners illustrate this point (Antao et al., 2006; Attfield and Petsonk 2007; Laney et al., 2009, Laney and Attfield 2010, and Wade et al., 2011).

Miller et al. (1997, 2007) and Miller and MacCalman (2009) reported on the results of mortality research conducted in a group of British coal miners. These miners participated in the Pneumoconiosis Field Research (PFR) program. As reported in the preamble to the proposed rule (75 FR 64462), industrial hygiene data was collected as part of that program to quantify typical concentrations of respirable dust and respirable quartz for a variety of occupations within the mines. The data was used to determine individual exposure profiles for participating miners. The mortality of this large cohort of 17,820 coal miners was followed from 1970 through 2006 (Miller et al. 2007). The researchers presented alternative regression analyses to predict risk of mortality in relation to time-dependent estimates of individual exposures to respirable dust and respirable quartz. The researchers concluded that CWP mortality is directly related to exposure to respirable coal mine dust, which is a better single predictor of CWP risk than is respirable quartz exposure. These results are consistent with earlier findings (Hurley et al. (1982); Miller et al. (1997)) that respirable coal mine dust exposure is more closely associated with the development of pneumoconiosis than is quartz. Based on all of the available evidence, MSHA believes that respirable coal mine dust has a fibrogenic effect on the development of CWP in coal miners independent of the quartz or silica content of the coal. High silica content may accelerate the progression of CWP to PMF, the most severe form of CWP, but there is no evidence to suggest that

the presence of silica is a necessary condition for CWP, PMF, severe emphysema, or NMRD mortality.

Exposure to respirable coal mine dust from high rank coal is associated with greater risks of CWP and nonmalignant respiratory disease (NMRD) mortality. However, evidence of high risks in identified hot spots does not imply that risks in other areas are insignificant. Exposure to respirable coal mine dust from lower rank coal still places miners at significant excess risk for CWP and NMRD mortality. MSHA's Quantitative Risk Assessment (QRA) for the final rule shows that significant excess risks of CWP and NMRD mortality under the existing standard are present for miners at low rank coal mines—i.e., outside the geographic ''hot spots'' identified by some commenters. (See QRA, Tables 13, 14, 15, 17, and 18).

The CWXSP data from 2005–2009 published by Suarthana et al. show that some regions with lower rank coal, i.e., regions not identified as hot spots, also tend to have younger miners with less tenure. For example, in MSHA Districts 8, 9, and 10, tenure underground was less than 5 years for 49.1%, 47.0%, and 49.4% of the miners, respectively. Surveillance of underground coal miners in these regions indicates that CWP is occurring, though at lower rates, primarily due to the age and tenure profile of the miners. In the remaining Districts that mine bituminous coal, the median tenure was over 20 years (Table III–4).

Suarthana did not publish data from MSHA District 1, which mines anthracite, the highest ranked and most fibrogenic coal. District 1 surveillance data from NIOSH (USDHHS, CDC, NIOSH, Statistics for Underground Miners Working in MSHA District 01 (Anthracite Coal Mining Regions in Pennsylvania, 2011b) shows that during the period of 2004–2008, 67 anthracite miners participated in the ECWHSP. Age information was available for 58 miners. Mean age was 41 (range 18–69 years). Tenure information was available on 55 of these miners. The mean tenure was 17 years (range 0–45 years). Information on tenure at the face (production area) was available for 51 miners; mean years of face work was 17 years (range 1–45 years). The prevalence of CWP 1+ in 58 examined miners was 6 cases (or 10%). Commenters did not include anthracite coal mines in MSHA District 1 in their discussions of regional hot spots or suggest that silica was responsible for CWP at anthracite coal mines. Nevertheless, at exposure levels experienced over a 45-year occupational lifetime under the existing standard, anthracite coal mines present significant excess risks of CWP and NMRD mortality. (See QRA, Tables 13, 14, 15, 17, and 18). In the case of NMRD mortality, risks for anthracite coal miners are estimated to be far greater than for miners in the same occupations at high rank bituminous coal mines (QRA, Tables 17 and 18).

Overall, NIOSH surveillance data indicate that pneumoconiosis at the CWP 1/0+ level is occurring in underground coal miners across each MSHA Coal District in the United States; not just in the ''hot spot'' areas of southern West Virginia, eastern Kentucky, and western Virginia highlighted by some commenters.

Table III–4 shows that almost 50 percent of CWXSP participants in Districts 8, 9, and 10 have tenure of less than five years; and, yet, miners in those districts continue to develop CWP 1/0+ at 0.6% (16 cases), 1.2% (28 cases), and 2.3% (27 cases) respectively. As shown in Table III–1, miners continue to develop CWP in all MSHA Districts.

The commenters who questioned the validity of the reduction in the existing 2.0 mg/m^3 standard focused on the dose-response relationship and asserted that data generated from pre-1970 were out-of-date and should not be used for risk assessment purposes. MSHA's QRAs for the proposed and final rules assessed risk at current exposure levels. Data shown in Tables III–1 and III–2 indicate that CWP is continuing to develop, especially in miners with more underground tenure, as stated in MSHA's QRA. Almost all of these miners have worked only during the period while the existing 2.0 mg/m^3 standard has been in effect. While average exposures have been reduced, current exposure conditions place miners at significant risk of incurring material impairment of health or functional capacity over their working lives.

Other commenters suggested that MSHA selectively chose CWP data to include in the health effects assessment. They suggested that CWP prevalence is not increasing. In response, MSHA notes the data show that there was a reduction in prevalence of CWP in the 1990s until continued surveillance indicated that many cases of CWP were missed or newly developed (Attfield et al., 2009). Also, the prevalence of CWP increased with age and tenure. (See Tables III–1, III–2, III–3, and III–4.)

TABLE III–4—COAL WORKERS' X-RAY SURVEILLANCE PROGRAM (CWXSP)—UNDERGROUND COAL MINING SURVEY SUMMARIES OF OBSERVED PREVALENCE OF CWP—2005–2009 [1] [2]

Parameters	MSHA District									
	2	3	4	5	6	7	8	9	10	11
Median Dust (in mg/m³)	0.79 (0.54–1.05)	0.96 (0.46–1.20)	0.80 (0.31–3.08)	0.55 (0.18–2.34)	0.75 (0.36–1.17)	0.69 (0.28–1.12)	1.14 (0.73–1.70)	0.98 (0.30–1.30)	1.14 (0.76–1.21)	0.99 (0.52–1.12)
Number of Miners	911	1,504	1,280	689	423	522	2,713	2,351	1,190	825
Age of Miners Examined:										
≤19	1	10	0	0	0	6	43	73	28	3
20–29	84	148	106	29	29	67	682	686	339	64
30–39	129	207	216	79	70	103	613	529	346	91
40–49	142	218	282	242	174	192	564	524	222	175
50–59	471	785	607	316	132	143	729	464	240	424
≥60	84	136	69	23	18	11	82	75	15	68
Median Tenure (range)	25 (0–44)	22 (0–50)	25 (0–44)	27 (0–42)	24 (0–44)	20 (0–42)	5 (0–45)	5 (0–42)	5 (0–40)	24 (0–50)
Tenure %:										
0–4 years	20.1	20.6	11.0	7.8	8.5	14.0	49.1	47.0	49.4	25.5
5–10 years	11.5	12.9	12.1	6.5	10.9	11.5	14.1	14.6	16.2	6.6
11–20 years	11.5	14.0	18.9	14.7	19.4	24.7	12.9	14.8	14.1	10.6
21–30 years	28.2	25.3	26.7	44.0	40.9	33.3	17.6	18.0	13.4	40.1
41–40 years	28.3	26.5	30.6	26.6	19.6	16.3	6.2	5.4	6.9	17.0
> 40 years	0.3	0.7	0.7	0.4	0.7	0.2	0.1	0.1	0.0	0.4
Observed Prevalence of X-ray Findings:										
CWP 1/0+	22 (2.4%)	39 (2.6%)	125 (9.8%)	62 (9.0%)	58 (13.7%)	49 (9.4%)	16 (0.6%)	28 (1.2%)	27 (2.3%)	20 (2.4%)
Age of Cases:										
≤19	0	0				0	0	0	0	0
20–29	1	1	0	0	0	0	2	1	2	0
30–39	0	0	1	1	0	1	2	5	2	0
40–49	3	8	23	25	28	19	1	8	10	4
50–59	14	23	89	30	29	28	10	13	12	10
≥60	4	7	12	6	1	1	1	1	1	6

[1] Inspector-measured coal mine dust concentration data at mine level 1970–2008.

[2] Observed prevalence is reported; Suarthana et al. estimated predicted CWP prevalence by using the 1992 Attfield and Morring (1992b) model. Attfield and Morring used mean job-specific dust levels used in the 1992 estimates, not mean mine specific dust levels. The paper reported median dust levels.

Source: Suarthana et al., 2011.

NIOSH reports prevalence in 5-year intervals for miners who voluntarily participate in the CWXSP. The numbers of miners who volunteer for medical surveillance vary over time (Table III–2) and the degree of detailed information provided also varies over time. Participation rates are dependent, in part, on availability of screening resources. NIOSH screens as many miners as possible through both the CWXSP (regular screening program) and the ECWHSP (enhanced screening program). Over time, the percentage of actively employed miners who volunteered for medical surveillance varied from 26% for the 1995–1999 time period to 34% for the 2000–2004 time period to 42% for the 2005–2009 time period, across all MSHA Districts (Table III–1). The requirements in final § 72.100 will increase participation rates. Final § 72.100 requires that each operator provide to each miner, including each surface coal miner, who begins work at a coal mine for the first time, an initial examination consisting of chest x-rays, spirometry, symptom assessment, and occupational history, and the opportunity to have the medical examinations at least every 5 years thereafter. MSHA expects that participation rates will increase due to the inclusion of surface miners in the screening/surveillance program. Other commenters suggested that more studies need to be completed before a revised standard can be developed since MSHA did not demonstrate that cases of CWP can be prevented under the proposed standard.

The QRA to the proposed rule demonstrated that cases of CWP, along with emphysema, silicosis, and chronic bronchitis, known collectively as ''black lung,'' could be prevented under the proposed respirable dust standards. The QRA relied on MSHA inspector and operator sampling data collected during the 5-year period 2004–2008 and predominantly relied on 4 epidemiologic studies from 1995, 2007, 2008, and 2009. These studies relied on coal mine dust samples and data collected from 1968 to 1988. The researchers, who conducted the studies that MSHA relied on for the proposed rule, took steps to mitigate biases in the data used to estimate the health effects of miners' exposure to respirable coal dust. The relationship between exposure to respirable coal mine dust and disease prevalence is essentially unchanged since the studies that MSHA relied on were conducted. In addition, MSHA upwardly adjusted operator samples and excluded abatement samples taken by MSHA to mitigate biases in the MSHA data. The QRA showed that exposures under the existing respirable coal mine dust standards are associated with cases of CWP, chronic obstructive pulmonary disease (COPD) including severe emphysema, and death due to non-malignant respiratory disease (NMRD). All of these outcomes constitute material impairments to a miner's health or functional capacity.

The QRA also analyzed and quantified the excess risk of miners incurring CWP or COPD, or dying due to NMRD, after 45 years of full-shift occupational exposure at levels currently observed in various exposure categories. Miners having different occupations and working at different locations face significantly different levels of respirable coal mine dust exposure. In every exposure category, including clusters of occupational environments showing the lowest average dust concentrations, current exposure conditions place miners at significant risk of incurring each of the material impairments considered.

Finally, the QRA projected the risk of material impairments after the proposed respirable dust standards were applied to each shift. Several provisions in this final rule will singularly lower coal miners' exposure to respirable dust and reduce their risks of disease and disease progression. These provisions include lowering the respirable dust standard, full-shift sampling to account for occupational exposures greater than 8 hours per shift, changing the definition of normal production shift, use of CPDMs for sampling, basing noncompliance determinations on MSHA inspectors' single shift sampling, revising the sampling program, requiring operator corrective action on a single full-shift operator sample, and changing the averaging method to determine compliance on operator samples. MSHA's QRA estimates the reduction in health risks when two provisions of the final rule are implemented—the final respirable dust standard and single shift sampling. The QRA shows that these two final provisions would reduce the risks of CWP, severe emphysema, and death from non-malignant respiratory disease (NMRD). For instance, the QRA for the final rule projects, over a 45-year occupational lifetime, significant improvements in almost every underground job category and at least 6 surface categories. Large aggregated improvements are also projected for longwall tailgate operators and continuous mining machine operators.

While the final 1.5 mg/m^3 standard will reduce the risk of impairment, disease, and premature death, estimates from MSHA's revised QRA reveals remaining risk at the final standard. However, MSHA believes that other provisions of the final rule will diminish these risks. The impacts of these other final provisions were not considered in the QRA. Cumulatively, MSHA expects that the final provisions will reduce the continued risks that miners face from exposure to respirable coal mine dust and would further protect them from the debilitating effects of occupational respiratory disease.

It has been over 40 years since the 1969 Coal Act was enacted. Exposures to respirable coal mine dust have been reduced with resultant reduction in disease prevalence. Table III–2 shows that: In the time period from 2005 to 2009 miners with over 25 years of tenure in underground coal mining have a CWP 1/0+ prevalence of 6.9%; and miners with only 0–9 years of tenure have CWP 1/0+ prevalence of 0.6% for that same time period. These miners are younger and have less cumulative exposure to respirable coal mine dust. The average prevalence of CWP 1/0+ for the period 2005 to 2009 was 4.1%.

The overall prevalence of CWP 1/0+ in all miners was 2.7% (See Table III–1) for the 2005–2009 time period. However, NIOSH data show that CWP 1/0+ is still occurring at significant levels in the active mining population. With continued surveillance over time, the number of CWP 1/0+ cases detected annually fluctuates; however, significant risk of material impairment of coal miners' health still remains, as noted in the QRA for this final rule.

Smoking in miners was mentioned by some commenters as a causative factor for observed lung disease in miners.

Exposure to coal mine dust is an independent factor in the development of CWP. Smoking is a risk factor for the development of lung disease, including cancer, COPD, and emphysema. Smoking and exposure to respirable dust have an additive effect on the development of COPD in miners. However, as shown in the Health Effects section of the preamble to the proposed rule, significant levels of NMRD, such as COPD and emphysema, occur in nonsmoking miners caused by their exposure to respirable coal mine dust.

In the first round of the CWHSP, 54.4% of underground coal miners were smokers, 25.5% were former smokers, and 20.1% were never smokers (Beeckman, et al., 2001; Beeckman, et al., 2002). Estimates of the current prevalence of smoking in coal miners (by MSHA District) are shown in Table III–5. This data set was reported as part

of the ECWHSP data on NIOSH's Web site. Smoking status among surveyed coal miners is currently estimated to be 22% smokers, 27% former smokers, and 51% never smoked. Again, since respirable coal dust exposure and smoking have an additive effect on the occurrence of COPD in smoking miners, MSHA believes the reduction in respirable dust levels in mining due to implementation of the final rule, coupled with the reduction in smoking in the mining population, also would have a beneficial effect on reducing the occurrence of NMRD in this population over time. (See Section IV, Health Effects, in the preamble to the proposed rule (75 FR 64458), Green et al., 1998a, and Kuempel et al., 2009b.)

TABLE III–5—SMOKING PREVALENCE AMONG COAL MINERS PARTICIPATING IN THE ECWHSP, 2006–2010

MSHA district	Number of miners	Smoking status		
		Never (%)	Former (%)	Current (%)
1	58	22 (38)	8 (14)	28 (48)
2	664	356 (54)	200 (30)	108 (18)
3	1,019	531 (52)	264 (26)	224 (22)
4	1,059	573 (54)	250 (24)	236 (22)
5	629	314 (50)	170 (27)	145 (23)
6	374	182 (49)	79 (21)	113 (30)
7	443	205 (46)	109 (25)	128 (29)
8	667	312 (47)	205 (31)	150 (22)
9	879	462 (53)	262 (30)	155 (18)
10	135	78 (58)	39 (29)	18 (13)
11	565	299 (53)	158 (28)	108 (19)
Total	6,492	3,334 (51)	1,744 (27)	1,413 (22)

Source: USDHHS, CDC, NIOSH, CWHSP, Statistics for Underground Miners, Districts 1 to 11, 02/13/2011.

MSHA's existing standard permits overexposures above the respirable coal mine dust standard due to averaging samples. Some commenters expressed concern that the proposed single sample provision would increase the number of citations that a mine operator receives, but would not affect a miner's long-term exposure and the subsequent development of chronic health effects.

The single sample provision in this final rule is changed from the proposal and only applies to MSHA inspector samples. MSHA does not anticipate that this final provision will, over the long term, increase the number of operator citations. A single sample that exceeds the standard would not cause or significantly contribute to disease. However, cumulative overexposures—masked when used as part of an average based on multiple samples—could cause or significantly contribute to development or progression of diseases, with each overexposure being an important factor contributing to disease. Compared to the current method of dust sampling, single full-shift samples will reduce a miner's cumulative exposure to respirable coal mine dust and the risk of developing occupational respiratory disease. For these reasons, single full-shift samples above the standard must be controlled so that miners' cumulative exposure is not increased beyond the level that will induce disease.

Final § 72.800 provides that the Secretary will use a single, full-shift measurement of respirable coal mine dust to determine the average concentration on a shift since that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift. Additional discussion on single full-shift sampling is located elsewhere in this preamble under § 72.800.

Some commenters questioned the relationship between respirable coal mine dust exposure and development of NMRD, such as COPD and chronic bronchitis. Epidemiological studies that were discussed in the Health Effects section of the preamble to the proposed rule (75 FR 64460) found that coal miners from the United States, Great Britain, Australia, France, Asia, and South Africa developed decreased lung function that was proportional to the miners' cumulative respirable coal mine dust exposure. Exposure to higher respirable coal mine dust levels over a working lifetime resulted in more miners experiencing a significant loss of lung function. These studies illustrate a strong dose-dependent relationship between respirable coal mine dust exposure and subsequent development of obstructive lung diseases, such as lung function impairment, chronic bronchitis, and emphysema (75 FR 64465). The decline in lung function is not linear; studies indicate that there may be some recovery following a year or two of exposure. But, the recovery can be temporary and is affected by continued exposure. As the number of years working in mining grows, the adverse effect on lung function does as well.

Chronic exposure to respirable coal mine dust causes chronic bronchitis, as was found in 35% of a mining population in the United States. This disease is different from that caused by tobacco smoke. Coal mine dust-related bronchitis is associated with deposits of fibrous tissue, mineral pigment, and inflammatory cells in the walls of membranous and respiratory bronchioles and alveolar ducts. This condition is referred to as mineral dust airways disease. Emphysema is caused both by smoking and coal mine dust exposure. Severity of disease has been related to dust content of the lungs and cumulative lifetime coal mine dust exposure. Kuempel et al. (1997b) showed that significant decrements in lung function occur by the age of 65 years in long-term nonsmoking miners exposed to an average respirable coal mine dust concentration of 0.5 mg/m^3.

One commenter stated that for proper evaluation of the health effects studies, more information is needed; such as miner jobs, number of job changes, time spent on specific jobs, number and size of mines, and employment in different mines.

Many of the studies reported in the proposed rule had this type of detail in the data collected from certain mining populations, although only summary data were reported in the published papers. This type of detail was available in the industrial hygiene (IH) surveys conducted by British researchers as part of the Pneumoconiosis Field Research (PFR) program established in the early

1950s and explained in the proposed rule (75 FR 64462). Concurrent with the health surveys, a separate IH assessment was conducted as part of the PFR program that quantified typical concentrations of respirable dust and quartz for a variety of occupations within the mines. These exposure measurements were linked to data from payroll systems on the times worked by each miner in the same occupations. This IH assessment produced individual and period-specific estimates of exposure to respirable dust and quartz (MacCalman and Miller, 2009; Attfield and Kuempel, 2003; Scarisbrick and Quinlan, 2002).

In addition, the U.S. National Coal Study (NCS) is a long-term epidemiologic study, limited to miners in a selected group of mines with various seam heights, mining methods, coal types, and geographic locations. Many of the published peer-reviewed epidemiological studies reported in the proposed rule's health effects section are based on data from the NCS. In those studies, estimates of cumulative dust exposures were given. Examples of these studies include Henneberger and Attfield (1997) and Kuempel et al. (1997b). These papers were reviewed in the development of the proposed rule (75 FR 64460).

Similarly, some commenters identified seam height or mine size as potential factors that were not modeled in the regression analyses but could potentially contribute to the observed frequency of adverse health effects. To date, there are some epidemiological studies that have directly explored the association of coal seam height or mine size and CWP, PMF, non-malignant respiratory diseases, emphysema, or FEV_1 declines. However, no epidemiological coal miner studies have modeled respirable coal mine dust and non-malignant respiratory diseases while examining the confounding effect of coal seam height. The available studies are described below.

Peters et al. (2001) studied the influence of coal seam height on lost-time injury and fatality rates at small underground bituminous coal mines. Nonetheless, Peters did not examine the association of coal seam height and NMRDs or FEV_1 declines among coal miners.

Suarthana et al. (2011) stated that low seam height likely contributed to excess CWP cases. It was also noted that thin seam mining poses difficulties because the rock surrounding the coal seam often has to be cut to permit equipment to be employed effectively (also see Pollock et al., 2010). Suarthana et al. (2011) noted that the average coal seam height was lower in central Appalachia than in other regions (median seam height 60 (range 26–138) inches versus 79 (range 31–168 inches; $p<0.001$). Data on seam height were obtained from the MSHA Standardized Information System (MSIS) for the time period of 2005–2009. Suarthana concluded that the observed prevalence of CWP substantially exceeded predicted levels in central Appalachia. Therefore, coal seam height was reported as a likely factor contributing to the observed elevated CWP rates. However, Suarthana stated that further study is needed to characterize the factors responsible for elevated CWP rates. Overall, no direct association between CWP and coal seam height was observed.

Cowie et al. (2006) found FEV_1 deficits in 1,267 (18%) British coal miners. Cumulative respirable dust exposure ranged up to 726 gh/m^3 (gram hours per cubic meter) with a mean of 136 gh/m^3; on average an exposure to cumulative respirable dust of 100 gh/m^3 was associated with a reduction in FEV_1 of 0.0631. In addition, an increase of 50 gh/m^3 was associated with an increase of about 2% in the proportion of men with small deficits in FEV_1 (-0.367 deficit); 1.5% to 2% for medium deficits (-0.627) depending on age; and a similar pattern was observed for large deficits (-0.993), but with smaller increases. Cowie stated that these results may be due to differences in seam height, mechanical breathing efficiencies, or the workload associated with limb size or body mass. Yet, the association of FEV_1 deficits among coal workers and seam height was not explored.

In terms of FEV_1 declines, Wang et al. (1999) investigated the association between occupational exposure to dust and clinically important FEV_1 declines in a group of 310 underground coal miners (cases) and their matched mining referents with stable lung function. This study defined a seam height <50 inches as a low seam mine, and compared the total years worked in low seam mines between two groups 1) cases (310 underground coal miners) and 2) matched partners (referents); cases and referents averaged 7.2 and 5.4 total years worked ($p=0.21$), respectively. However, the authors did not investigate the association between clinically important FEV_1 declines and mine seam height and mine size. Overall, logistic regression models conducted in this analysis did not explore the relationship between clinically important declines in FEV_1 and seam height.

Laney et al. (2010) acknowledged that their study is the first to directly examine miner respiratory health and mine size. Laney also highlighted that the prevalence of CWP and PMF increased between the 1900s and the 2000s for mines of all sizes. The prevalence of CWP is 6.5% in the 1970s, 2.5% in the 1980s, 2.1% in the 1990s and 3.2% in the 2000s. The prevalence of PMF was higher in larger mines (50+ miners) in the 1970s and 1980s; whereas, the prevalence was higher in smaller mines (<50 miners) in the 1990s and 2000s.

Laney and Attfield (2010) examined NIOSH CWXSP data collected between 1970 and 2009 and evaluated the effect of mine size on the development of CWP and PMF. They found that miners working in small mines (fewer than 50 employees) had a significantly higher prevalence of CWP compared to miners who worked in large mines (with 50 or more employees). They reported that miners from small mines were five times more likely to have radiographic evidence of PMF (1% of miners) compared to miners from larger mines (0.2%).

Suarthana et al. (2011) found that mine size (e.g., number of employees in a mine) may be associated with higher CWP prevalence levels. The researchers used the Attfield and Morring (1992b) exposure response model versus the original Attfield and Morring (1992a) model that used mean job-specific dust levels. The researchers stated that they did not have the dust level information specific to all jobs; instead, the researchers estimated dust exposure using the mean mine-specific dust level based on MSHA compliance data. The median measured dust concentration and range are reported at the mine level. However, the QRA for the proposed rule estimated CWP risk based on mean job-specific dust levels. The authors excluded underground coal miners from MSHA district 1 due to the small number of participants (n=55) and difference in coal type (anthracite) compared to the other districts in the analysis (bituminous). In addition, the authors state that further study is needed to characterize the factors responsible for elevated CWP rates; the results point to a need for greater vigilance in controlling coal mine dust, especially that which arises from rock cutting.

One commenter said that MSHA failed to consider in the proposed rule other factors that NIOSH discussed in its 2011 Current Intelligence Bulletin 64, such as free radicals, particle occlusion, and bioavailable iron.

MSHA did not use the 2011 NIOSH literature update in the development of the proposed rule because it was not final when the rule was published on October 19, 2010. However, the Health Effects section in the preamble to the proposed rule included a section called Hazard Identification (75 FR 64458) that discussed these factors and how they affect the toxicity of coal particles.

One commenter stated that MSHA analyzed only part of the NIOSH data. This commenter, however, did not provide detail about what data were missing.

The preamble to the proposed rule stated that it summarized the health effects from occupational exposure to respirable coal mine dust. This summary included a literature review on this same subject published in its proposed rule on Plan Verification, which was published on March 6, 2003 (68 FR 10784). The literature referenced in that document pre-dated 1999. The October 19, 2010, proposed rule updated the health effects information that was published in 2003 and discussed the more recent literature dating from 1997 to mid-2009 (75 FR 64458). MSHA reviewed extensive literature not only published by NIOSH but also published by researchers in other countries, such as France, Britain, Taiwan, Netherlands, Germany, China, and South Africa.

One commenter stated that during the 2009 spot inspections, MSHA personnel routinely observed improper sampling procedures for dust collection, improper handling of sampling devices, and improper maintenance and calibration of approved sampling devices. This commenter stated that improper procedures must be corrected before lowering the respirable dust standards.

In response, MSHA points out that the QRA to the proposed rule was based on both MSHA inspector samples and operator samples during 2008 and 2009. MSHA's enforcement experience is that most mine operators attempt to be in compliance with the existing respirable dust standards during MSHA inspector sampling. However, even if proper sampling procedures, proper handling of sampling devices, and proper maintenance and calibration of approved sampling devices had been used, this Health Effects section and the QRA to the proposed rule establish that at the existing standard of 2.0 mg/m^3, cases of CWP and COPD continue to occur.

A commenter stated that MSHA does not really know how much dust that miners are exposed to and therefore needs to conduct a study using the CPDM to determine the exposure before reducing the exposure level.

Dose-response relationships have been determined by using the approved sampling device (gravimetric or CMDPSU) over the last 35 years. NIOSH and MSHA will continue to study the effects of respirable coal mine dust; however, the relationship between exposure and effect is well established. The final rule will lower miner exposure to respirable coal mine dust thus resulting in less respiratory disease in the miner population.

B. Quantitative Risk Assessment (QRA)

Below is a summary of the quantitative risk assessment (QRA) in support of the final rule. The QRA for the final rule revises the QRA in support of the proposed rule. The QRA for the proposed rule (US Department of Labor, Quantitative Risk Assessment in Support of Proposed Respirable Coal Mine Dust Rule, September 2010) addressed the proposed respirable coal mine dust standard of 1.0 mg/m^3, and 0.5 mg/m^3 for intake air and for part 90 miners. The QRA for the final rule addresses the final 1.5 mg/m^3 respirable coal mine dust standard as well as the 0.5 mg/m^3 standard for intake air and part 90 miners. In response to public comments, it also includes an uncertainty analysis.

The QRA for the proposed rule was peer reviewed by independent scientific experts at NIOSH and OSHA. The full text of that QRA and the peer reviewers' reports can be accessed electronically at *http://www.msha.gov/regs/QRA/CoalDust2010.pdf* and *www.regulations.gov*. MSHA posted all comments on the QRA for the proposed rule at *http://www.msha.gov/REGS/Comments/2010-25249/CoalMineDust.asp* and on *www.regulations.gov*. The full text of the QRA for the final rule can be accessed electronically at *http://www.msha.gov/regsqra.asp* and *www.regulations.gov*.

The QRA for the final rule, like the QRA for the proposal, addresses three questions: ''(1) whether potential health effects associated with current exposure conditions constitute material impairments to a miner's health or functional capacity; (2) whether current exposure conditions place miners at a significant risk of incurring any of these material impairments; and (3) whether the final rule will substantially reduce those risks.''

After summarizing respirable coal mine dust measurements for miners in various occupational categories, Part 1 of the QRA for the final rule shows that exposures at existing levels are associated with CWP, COPD including severe emphysema, and death due to NMRD. All of these outcomes constitute material impairments to a miner's health or functional capacity.

Part 2 of the QRA for the final rule analyzes and quantifies the excess risk of miners incurring CWP or COPD, or dying due to NMRD, after 45 years of full-shift occupational exposure at levels currently observed in various exposure categories. Miners having different occupations and working at different locations face significantly different levels of respirable coal mine dust exposure. In every exposure category, including clusters of occupational environments showing the lowest average dust concentrations, current exposure conditions place miners at a significant risk of incurring each of the material impairments considered.

Part 3 of the QRA for the final rule projects the risk of material impairments after the final respirable coal mine dust standards are applied to each shift. It estimates the reduction in health risks when two provisions of the final rule are implemented—the final respirable dust standard and single shift sampling. The QRA shows that these two provisions would reduce the risks of CWP, severe emphysema, and death from NMRD. Additionally, MSHA believes that other provisions of the final rule (e.g., full-shift sampling, changing the definition of normal production shift, use of CPDMs for sampling, revising the sampling program, and requiring operator corrective action based on a single full-shift operator sample will further diminish these risks.

The final rule is projected to have a greater impact on reducing risk for underground miners than for surface miners. Although the final rule will benefit coal mine workers who are exposed to average respirable dust concentrations both above and below the final 1.5 mg/m^3 and 0.5 mg/m^3 standards, it is projected to have its greatest impact on workers who currently experience frequent exposures to dust concentrations above the final standards. Underground work locations exceed the final respirable dust standards on many more shifts than surface locations and also tend to experience higher average dust concentrations.

The final rule is expected to reduce the risks of CWP, severe emphysema, and NMRD mortality attributable to respirable coal mine dust exposures. Table 28 of the QRA for the final rule contains the projected reduction in these risks for each occupational category. For progressive massive

fibrosis (PMF), the most severe stage of CWP considered, reductions of up to 56 excess cases per thousand are projected for underground workers at age 73, depending on occupation. For severe emphysema at age 73, the projected improvements for underground workers range up to a reduction of 34 cases per thousand depending on occupation. Again for underground workers, the reduction in excess cases of death due to NMRD by age 85 is projected to range up to 6 per thousand, depending on occupation. For surface workers, reductions exceeding 1 case per thousand exposed miners are projected for PMF and severe emphysema in several occupational categories. Excess risks per thousand part 90 miners are projected to decline by 19 cases of PMF at age 73, 14 or 22 cases of severe emphysema at age 73 (depending on race), and 4 cases of NMRD mortality by age 85.

Part 4 of the QRA for the final rule contains an analysis of uncertainties in the projected reductions in risk. This includes both a quantitative analysis of sensitivity to the assumptions and methods used and a qualitative discussion of the maximum range of credible estimates for projected reductions in respirable coal mine dust exposures. MSHA's best estimates were found to lie near the middle of the range produced by alternative assumptions.

In all of its calculations, the QRA assumes that miners are occupationally exposed to respirable coal mine dust for a total of 86,400 hours over a 45-year occupational lifetime (e.g., either 48 weeks per year at 40 hours per week, 32 weeks per year at 60 hours per week, or any other work pattern that amounts to an average of 1,920 exposure hours per year). Current health risks are greater than those shown in the QRA for miners working more than 1,920 hours per year.

In addition, the final rule also tightens the requirement for normal coal production necessary for a valid dust sample, requires the use of CPDMs, revises the dust sampling program, and requires operator corrective action on a single, full-shift operator sample. These provisions are expected to further reduce respirable dust exposures, thereby resulting in improvements greater than those shown in the QRA. For a discussion of the benefits of the final rule, see Chapter V of the REA.

Public comments on the QRA for the proposed rule addressed five issues: (1) Hazard identification, (2) exposure-response models and possible threshold effects, (3) reliance on mean and cumulative exposures, (4) method of projecting exposures and risk reductions under successful implementation of final rule, and (5) uncertainty in the QRA's results.

1. Hazard Identification

Some commenters stated that the QRA for the proposed rule did not contain a hazard identification section, consisting of toxicological, epidemiological, or clinical evidence addressing whether the existing standard of 2.0 mg/m^3 causes incremental harm to miners' health.

MSHA provided a comprehensive evaluation of the critical scientific evidence supporting a causal connection between respirable coal mine dust exposures at the current level and adverse health effects in Section IV, Health Effects, of the preamble to the proposed rule, and in Section 1(d) of the QRA for the proposal which pertained to health effects and material impairment under current exposure conditions.

MSHA agrees with the commenters that the hazard identification step should reflect current biological understanding of the inflammatory mode of action for lung diseases induced by inhalation of coal mine dust. Section IV.B.4 of the preamble to the proposed rule discussed a variety of biological mechanisms including inflammation.

A few commenters stated that the QRA relied on spurious associations among historical trends to establish a causal relationship between respirable coal mine dust exposures and adverse health effects. Associations among historical trends played no role in the QRAs for the proposed or final rules. None of the three published regression analyses on which the QRAs rely regress one time trend against another. Instead, they quantify the relationship between varying levels of accumulated respirable coal mine dust exposure and the relative frequency of CWP (CWP1+, CWP2+, and PMF), severe emphysema, and premature death due to NMRD.[5] The subjects, i.e., data points, of these regression analyses are not rates of disease corresponding to aggregated exposure levels in particular years. Rather, the data points of the regression models are individual miners who were more or less simultaneously exposed to different levels of respirable coal mine dust. Thus, those miners who were exposed to low cumulative exposures serve as an internal control group compared to miners who were exposed to higher cumulative exposures.

Since the pertinent studies included miners whose lifetime cumulative exposures fell well below the existing standards, these studies provide MSHA with a basis for determining whether exposure levels under the existing respirable coal dust standards cause incremental harm to miners' health. This topic was addressed in sections 1(d) and 2 of the QRA for the proposal. The conclusion, subject to assumptions described in Section 2(f) of the QRA, is that current exposure conditions which, as shown in Tables 6 and 12 of the QRA for the proposal, are generally below the existing 2.0 mg/m^3 and 1.0 mg/m^3 standards, place miners at a significant risk of incurring each of the material impairments considered. MSHA reaches the same conclusion in the QRA to the final rule.

A few commenters stated that MSHA improperly relied on estimates of current disease prevalence from the NCWHSP, which was initiated in 1970 and is administered by NIOSH. These commenters stated that the NCWHSP surveillance data is biased due to issues related to the accuracy and precision in the diagnosis of CWP and PMF, low miner participation rates, limited exposure data, and other design and analysis limitations, e.g., participant self-selection.

MSHA did not rely on the NCWHSP surveillance data in its QRAs for either the proposed or final rules. The relatively low participation rates, potential self-selection biases, and a lack of correspondent exposure histories for the individual miners involved limit the use of the surveillance data as support for the QRAs. The QRAs primarily relied on three epidemiologic studies: Attfield and Seixas (1995); Kuempel et al. (2009a); and Attfield and Kuempel (2008). These three studies are consistent with the commenters' statement that estimates of current disease prevalence should characterize historical exposures of individual miners and incorporate cumulative exposure metrics in the analyses to check for a pattern of increasing disease risk with increased dust exposure level.

However, NCWHSP surveillance data are useful in establishing that significant health hazards persist under existing respirable coal dust exposure conditions. Although the utility of these data for quantitative risk assessment is limited, they do show there is an unacceptably high incidence of respirable coal mine dust-related disease among miners whose exposure came entirely after adoption of the existing respirable coal dust standards. (See Section III.A., Health Effects, in this preamble.)

Sections 1(d) and 2 of the QRAs for the proposed and final rules use the

[5] See Appendices I, J, and K of the QRAs for the proposed and final rules.

National Study of Coal Workers' Pneumoconiosis (otherwise known as NCS) data to address the question of whether a lifetime of occupational respirable coal mine dust exposure at the existing standard presents a significantly increased risk of adverse health effects (also see Goodwin and Attfield (1998) and Brower and Attfield (1998)). Unlike the surveillance data, the NCS data contain information on both the health and the respirable coal mine dust exposure of individual miners.

Dust exposure estimates are calculated by summing the products of time worked in each job within an individual miner's work history with dust concentration data from the exposure matrix derived by Seixas et al. (1991). Brower and Attfield (1998) found that the self-reported occupational history information on standardized questionnaires in the NCS collected from U.S. underground coal miners is reliable and that the amount of bias introduced by recalling past employment history is minimal. The NCS is further described in Section III.A of this preamble.

Some commenters discussed possible radiological misclassification in the NCS data.[6] However, these commenters did not dispute the appropriateness of using this type of study to establish a dose-response relationship that can be used effectively in a quantitative risk assessment.

Some commenters challenged the QRA's findings of significant health risks from exposure at the existing 2.0 mg/m³ standard over an occupational lifetime. MSHA addresses issues raised by these commenters in the following subsections: (a) CWP, including PMF; (b) severe emphysema; and (c) mortality due to NMRD.

a. CWP, including PMF

Some commenters acknowledged that the exposure-response analyses of respirable coal mine dust and CWP2+ show strong associations for high rank coal, with increased prevalence below the existing standard. However, these commenters maintained that there are no apparent increases in CWP2+ for low rank coals at exposures below the existing 2.0 mg/m³ standard. According to the commenters, the prevalence of CWP2+ and PMF predicted by the exposure-response models for miners experiencing an occupational lifetime of exposure to respirable coal dust at 2.0 mg/m³ from low or medium rank coal is less than the ''background'' rate, or prevalence, of positive radiographic findings among workers with no occupational exposure to respirable coal mine dust.

The commenters assumed, in reaching their conclusion, that the background prevalence, which had been shown to be approximately five percent for CWP1+ among 60-year-old non-exposed workers, was also five percent for CWP2+ and PMF. MSHA stated during one of the public hearings on the proposed rule that it is not appropriate to compare predictions of CWP2+ prevalence to the background prevalence for CWP1+.

The 1995 Attfield/Seixas study provides a formula, shown in Appendix I of the QRAs for the proposed and final rules, that enables estimation of the background prevalences for CWP1+, CWP2+, and PMF. Based on this formula, Table III–6 below shows the estimated background prevalences specific to CWP1+, CWP2+, and PMF, along with the corresponding prevalences predicted for miners exposed to respirable coal mine dust concentrations averaging 2.0 mg/m³ for an occupational lifetime of 45 years. The predicted prevalences of CWP1+, CWP2+, and PMF for miners exposed to respirable coal mine dust from low/medium rank coal are all far greater than the corresponding background prevalence. For miners exposed to high rank coal, the difference is even greater.

All of the estimated excess risks shown in both QRAs for exposed miners are denoted as ''excess'' risks precisely because the background prevalence has been subtracted from the predicted prevalence among exposed miners. Therefore, the calculation of excess risk always yields zero when exposure equals zero (i.e., no known occupational exposure); and, for exposed miners, excess risk is the increase in predicted prevalence from background. For example, at age 73, the center graph in Figure 10 of the QRAs for the proposed and final rules shows an excess risk of 156 cases of CWP2+ per thousand miners exposed for 45 years to respirable coal mine dust from low/medium rank coal at an average concentration of 2.0 mg/m³. The same result is obtained from Table III–6 below by subtracting the background prevalence of 6.2 percent (62 cases per thousand) from the prevalence of 21.8 percent (218 cases per thousand) shown for exposed miners (i.e., 21.8%-6.2%=15.6%: 156 cases per thousand miners, compare with Figure 10 in both QRAs).

TABLE III–6—EXPECTED PREVALENCE (PERCENTAGE) OF RADIOGRAPHIC FINDINGS INDICATING CWP AND PMF, BASED ON ATTFIELD/SEIXAS LOGISTIC REGRESSION MODEL

Age	Background (zero exposure)			45-year exposure at 2.0 mg/m³ top entry is for low/medium rank coal bottom entry is for high rank coal		
	CWP 1+	CWP 2+	PMF	CWP 1+	CWP 2+	PMF
60	5.3	1.1	0.7	17.8	4.7	2.2
	.....	.....	.....	32.7	14.7	9.3
65	7.6	2.2	1.3	24.1	8.7	4.2
	.....	.....	.....	41.7	25.2	16.9
73	13.3	6.2	3.9	37.1	21.8	11.6
	.....	.....	.....	57.0	49.6	37.8

Moreover, systematic error or bias due to systematic misinterpretation of radiographic data would be equally present in the results for both exposed and unexposed miners. Therefore, the effect, if it exists, of such misinterpretations should be canceled when background prevalence is subtracted from predicted prevalence to form the estimates of excess risk provided in the QRAs for the proposed and final rules. Some commenters

[6] Uncertainty due to radiological misclassification is addressed separately in Section 2, Exposure-Response Models and Possible Threshold Effects, (b) Bias due to Errors in Diagnosis and (c) Bias due to Errors in Exposure Estimates. See Wagner et al., 1992.

emphasized potential biases of this type but failed to mention that comparing the frequency of positive radiographic findings for exposed miners with the appropriate background rates serves to control for such biases.

b. Severe Emphysema

Some commenters stated that the weight of the epidemiological evidence fails to support any clinically significant deficits in forced expiratory volume (FEV_1) or any increased occurrence of chronic obstructive pulmonary disease (COPD) at cumulative respirable coal mine dust exposures equivalent to an occupational lifetime at the existing standard. [See the proposed rule discussion on emphysema; Green et al., 1998a; Kuempel et al., 2009a and 1997b]. However, the only metric used to support this assertion was the average loss in FEV_1 attributable to respirable coal mine dust exposure, across the entire population of exposed miners. Section 1(d)(ii) of the QRAs for the proposed and final rules points out that averaging FEV_1 loss across a population can mask the effects of exposure on susceptible sub-populations. Averaging fails to reveal the risk of FEV_1 reductions that exceed the average by a clinically significant amount.[7] Dust exposure at a given level may affect susceptible individuals to a far greater extent than what is suggested by the average effect. This type of masking is avoided when, as in NIOSH's 1995 Criteria Document, findings are expressed in terms of the prevalence of clinically significant outcomes.

For example, the average reduction in FEV_1 predicted by the Soutar/Hurley (1986) estimate is less than 140 ml after 45 years of occupational exposure to respirable coal mine dust at 2.0 mg/m^3. However, this average reveals little or nothing about the effects on individual miners. If the exposure effects were clinically significant in as little as one percent of all cases (10 cases per thousand), then this would constitute a significant increase in risk associated with exposure. An average reduction in FEV_1 of 140 ml or less does not preclude the possibility that the reduction exceeds 300 ml or even 1,000 ml in a substantial portion of the exposed population. Instead of solely focusing on the average loss in pulmonary function associated with respirable coal mine dust exposure, MSHA also considers the rate at which clinically significant lung function deficits have occurred. Table III–7 (reproduced from Table 7–3 of the NIOSH Criteria Document) provides estimates of the excess risk, i.e., the number of miners expected to develop a clinically significant deficit in FEV_1 per thousand exposed miners after an occupational lifetime of exposure to various concentrations of respirable coal mine dust.[8] Although the commenters correctly counted the Attfield and Hodous (1992) study that showed no clinically significant average reduction in FEV_1, Table III–7 shows that the average reduction is not the only outcome of interest. As shown in Table III–7, the Attfield and Hodous (1992) study also shows clinically significant reductions in FEV_1 in a substantial number of cases per thousand exposed miners. Specifically, for miners at age 65 occupationally exposed to a mean respirable coal mine dust concentration of 2.0 mg/m^3 over a 45-year working lifetime, the estimated excess risk of $FEV_1 < 65\%$ of the predicted normal value is 9 per 1,000 for never smokers in the western region and 12 per 1,000 for the eastern region.[9]

[7] The term ''clinical significance'' is defined as a difference in effect size considered by experts to be important in clinical or policy decisions, regardless of the level of statistical significance (Last, John M., ed. 2001. *A Dictionary of Epidemiology,* Fourth Edition. New York: Oxford University Press, Inc.

[8] The values shown in Table III–7 represent excess risks because they are adjusted to discount background rates of clinically significant deficits in FEV_1 for unexposed workers at age 65.

[9] Table III–7 is based on two studies: Attfield and Hodous (1992) and Seixas et al. (1993). The commenters indicated that the first study is a sound study methodologically—except for the exposure estimates that are biased to increase the exposure-response slope of the study group of pre-1970 miners exposed to high and unregulated respirable coal mine dust levels. MSHA discusses the comments on bias in the exposure estimates in Section III.B.2.c of this preamble.

Table III-7. — Excess (exposure-attributable) prevalence of clinically significant decreased lung function* among U.S. coal miners at age 65 following exposure to respirable coal mine dust over a 45-year working lifetime.

Study and region	Lung function decrement	Smoking status	Cases/1,000 at various mean dust concentrations		
			0.5 mg/m^3	1.0 mg/m^3	2.0 mg/m^3
Attfield and Hodous [1992]:†					
East	<80% FEV_1	Never smoked	10	21	44
		Smoker	12	24	51
West	<80% FEV_1	Never smoked	9	19	40
		Smoker	11	23	48
East	<65% FEV_1	Never smoked	2	5	12
		Smoker	4	8	19
West	<65% FEV_1	Never smoked	2	4	9
		Smoker	3	7	15
Seixas et al. [1993]‡	<80% FEV_1	Never smoked	60	134	315
		Smoker	68	149	338
	<65% FEV_1	Never smoked	18	45	139
		Smoker	27	67	188

*Decreased lung function is defined as FEV_1 <80% of predicted normal values. Clinically important deficits are FEV_1 <80% (which equals approximately the LLN, or the 5th percentile) and FEV_1 <65% (which has been associated with exertional dyspnea).

†Attfield and Hodous [1992] define the following coal ranks and regions:

East: anthracite (eastern Pennsylvania), and bituminous (central Pennsylvania, northern Appalachia [Ohio, northern West Virginia, western Pennsylvania], southern Appalachia [southern West Virginia, eastern Kentucky, western Virginia], Midwest [Illinois, western Kentucky], South [Alabama]).

West: Colorado and Utah.

‡Coal rank was not provided in Seixas et al. [1993]. However, miners were included from bituminous coal ranks and regions across the United States, as described in Attfield and Seixas [1995]:

1. High-rank bituminous (89%-90% carbon): central Pennsylvania and southeastern West Virginia
2. Medium/low-rank bituminous (80%-87% carbon): medium-rank—western Pennsylvania, northern and southwestern West Virginia, eastern Ohio, eastern Kentucky, western Virginia, and Alabama; low-rank—western Kentucky, Illinois, Utah, and Colorado.

Source: Reproduced from Table 7–3 of the NIOSH Criteria Document.

Similarly, the QRAs for the proposed and final rules focus on excess risk, rather than mean response, to show that respirable coal mine dust exposures for an occupational lifetime at the existing standard can significantly increase the risk of FEV_1 reductions associated with severe emphysema. Based on the exposure-response model described in Kuempel et al. (2009a), Figure 14 in both QRAs shows that among never-smoking white coal miners, the excess risk at 2.0 mg/m³ ranges from approximately 12 percent (117 cases per 1,000) at age 65 to approximately 16 percent (162 cases per 1,000) at age 80. These percentages represent the estimated probability that a miner exposed to an average respirable coal mine dust concentration of 2.0 mg/m³ over a 45-year occupational lifetime will develop severe emphysema attributable to that exposure.

The QRAs for the proposed and final rules use the pulmonary response model described in Kuempel et al. (2009a) as the basis not only for the estimates discussed previously, but also for the calculation of all current and projected excess risks of severe emphysema attributable to respirable coal mine dust exposures.[10]

Some commenters criticized the Kuempel et al. (2009a) study and the related study, Kuempel et al. (2009b) which relied on the same study population of 722 autopsied miners and non-miners. These commenters stated that the Kuempel et al. studies had little to no relevance to the existing or proposed dust standards because the exposures of the autopsied miners studied were pre-1970 and likely to have been much higher than current exposures. The commenters did not provide evidence to support their criticism of the Kuempel et al. (2009a and 2009b) studies.

Table 1 of the Kuempel et al. 2009b study and section 1(d)(ii) of the QRAs for the proposed and final rules show that the study group in question consisted of 616 deceased coal miners and 106 deceased non-miners (who presumably had no respirable coal mine dust exposure but functioned as internal controls in the statistical analysis).[11] Among the coal miners, the mean cumulative respirable coal mine dust exposure was 103 mg-yr/m³, with a standard deviation (σ) of 40.6 mg-yr/m³.

Since miners in the study had an average tenure of 34.3 years, they were exposed to an average respirable coal mine dust concentration of 3.0 mg/m³ (i.e., 103 mg-yr/m³/34.3 yr) over their occupational lifetimes, with $\sigma = 1.184$. Assuming an approximately lognormal distribution,[12] this would suggest that approximately 58% of these miners experienced average respirable coal mine dust concentrations less than 3.0 mg/m³ and 19% of them averaged less than 2.0 mg/m³.

The QRAs for the proposed and final rules are designed to evaluate risks expected for exposures accumulated over a 45-year occupational lifetime. Therefore, it is also relevant to examine the distribution of respirable coal mine dust concentrations that would, after a 45-year occupational lifetime, give rise to the same exposure totals as those experienced by miners in the Kuempel et al. 2009b study. This result in an average respirable coal mine dust concentration of 2.3 mg/m³, with $\sigma = 0.902$ mg/m³. In this case, again assuming an approximately lognormal exposure distribution,[13] approximately 82% of the miners would experience average respirable coal mine dust concentrations less than 3.0 mg/m³, 43% would average less than 2.0 mg/m³, and 18% would average less than 1.5 mg/m³.

Consequently, considering either the 34.3-year average tenure of miners in the study group (Kuempel et al., 2009b), or the 45-year occupational lifetime MSHA uses to evaluate occupational risks, it appears that the Kuempel et al., 2009a, 2009b reports are relevant to exposure conditions under the existing respirable coal mine dust standard.[14] Table 8 of the QRAs for the proposed and final rules show that MSHA's enforcement of the existing respirable dust standard has not eliminated work locations exhibiting average respirable coal mine dust concentrations greater than 1.5 mg/m³ or even 2.0 mg/m³. At the very least, these studies are highly relevant to risks at such work locations.

The commenters, in referring to the Kuempel et al. (2009a and 2009b) study population, identified self-reporting of smoking histories as a potential source of bias and rejected a suggestion by the studies' authors that the timing of self-reported data collection on smoking added to the studies' strengths. According to the studies' authors, data collection had occurred in the 1960s and 1970s, when smoking was not a contentious issue and Federal compensation programs for smoking-related illnesses had not yet been introduced. The commenters, however, contended that the authors' mention of possible smoking exposure misclassification ''tends to negate'' their claim that non-contentious smoking histories comprised a strength of the study. The commenters further argued that the studies' finding that dust exposure had a greater effect than smoking was unconvincing and that both of these factors were questionable for the study cohort because smoking histories were self-reported and ''when compensation matters are involved, smoking histories are likely to be unreliable.'' Commenters further stated that occupational dust exposure can have an effect on the development of emphysema and COPD, but the general literature still considers ''ordinary'' levels of occupational pollution to be minor compared to cigarette smoking and aging.

First, in response to commenters, as suggested by the studies' authors, MSHA points out that the reliability of the miners' smoking histories is unlikely to have been compromised by compensation programs in that the programs did not exist at the time of the studies. Kuempel et al. (2009a and 2009b) mention misclassification of smoking history only in a list of ''potential limitations'' and make no suggestion that this has anything to do with compensation incentives. Second, as demonstrated in the preceding discussion, respirable coal mine dust exposures for the autopsied miners were not ''far in excess of today's standard'', 2.0 mg/m³, as the commenters state. Third, respirable coal mine dust exposure estimates were not biased to overestimate high exposures and underestimate low exposures. (See discussion in the subsequent preamble section on bias due to errors in exposure estimates, Section III.B.2.c.). Finally, the commenters interpreted the finding that each mg-year/m³ of respirable coal mine dust exposure is, on average, similar in effect to each ''pack-year'' of cigarette

[10] See QRA for the proposed rule, Tables 16, 24, and Appendix J.

[11] The commenters stated that the study population in Kuempel et al., 2009a ''is comprised of 116 individuals with spirometry drawn from the same 722 autopsied miners and non-miners just discussed [in connection with Kuempel et al., 2009b].'' In response to commenters, although 116 subjects with FEV_1 data were used to define cutoff points for clinically significant emphysema severity, the logistic regression models relating respirable coal mine dust exposure to the probability of meeting these cutoff points used all 342 members of the study population with complete data. (See Kuempel et al., 2009a, Tables 1 and 2).

[12] If X is Lognormally distributed with mean = 3.0 and standard deviation = 1.184, then $Log_e(X)$ is Normally distributed with mean = 1.026 and standard deviation = 0.380.

[13] If X is Lognormally distributed with mean = 2.3 and standard deviation = 0.902, then $Log_e(X)$ is Normally distributed with mean = 0.756 and standard deviation = 0.380.

[14] Since these studies used the same methods for estimating pre-1970 exposures as the NCWHSP studies, the comments on possible biases in these exposure estimates also apply here. Comments on bias in the exposure estimates are addressed in the Section III.B.2.c.

smoking as somehow undermining the studies' credibility.[15] The commenters did not provide any references to support their view that the general literature still considers adverse health effects of ordinary levels of occupational pollution to be minor relative to those from cigarette smoking; nor did they provide evidence that this generalization applies specifically to respirable coal mine dust and emphysema.[16]

With respect to the data used in Kuempel et al. (2009a) to relate clinically significant cutoff points of emphysema severity to respirable coal mine dust exposures, the commenters stated, without any supporting evidence, that miners were coached to distort pulmonary measurements.

In addition, commenters stated that there was a significant trend between the emphysema index and FEV_1, but much of the variability was unexplained. The FEV_1 data (available for a small subset of the autopsied subjects) were used in this study only to establish appropriate cutoff points for clinically significant values of the emphysema severity index; the unexplained variability seen while establishing these cutpoints has no direct bearing on the logistic regressions that relate respirable coal mine dust exposures to the probability of exhibiting clinically significant emphysema severity.

The average cumulative dust exposure was reported to be 87 mg-year/m^3 among the autopsied miners used in the logistic regressions.[17] [18] This is notably less than the 103.0 mg-year/m^3 average reported for miners in the study population as a whole. Assuming the same coefficient of variation in exposures as reported for all miners in the study population (approximately 39%), it follows that autopsied miners included in the logistic regressions experienced exposures equivalent to a respirable coal mine dust concentration of 1.93 mg/m^3 averaged over a 45-year occupational lifetime, with $\sigma = 0.762$ mg/m^3.[19] Once again assuming an approximately lognormal exposure distribution,[20] this means that approximately 62% of these miners would have experienced average respirable coal mine dust concentrations less than 2.0 mg/m^3 and 32% of them would have averaged less than 1.5 mg/m^3. This calculation contradicts the commenters' claim that the study is applicable only to the pre-1970 era, when ''miners were exposed to respirable dust far in excess of today's standard.''

The commenters generally disagreed with MSHA's reliance on the Kuempel et al. (2009a) findings by focusing on the possibility of errors in the FEV_1 measurements and cumulative exposure estimates. Despite MSHA's heavy reliance on these studies in the QRA, the commenters did not include them in their evaluation of the weight of evidence. However, potential biases due to exposure and/or FEV_1 misclassification cannot explain all of the results.

Table 4 of Kuempel et al. (2009b) shows that a strong correlation (R^2 = 0.44) was observed between the amount of coal dust found in the lungs of deceased miners and the degree of emphysema severity determined at autopsy. This result, which depends on neither exposure estimates nor FEV_1 measurements, is statistically significant at a confidence level greater than 99.99 percent ($p < .0001$), after accounting for cigarette smoking, age at death, and race. The average emphysema severity index observed among never-smoking miners (302, or 30.2 percent of the lung affected, Kuempel et al., Table 2 (2009b)) exceeded the cutoff point (285) corresponding to a 20-percent reduction in FEV_1 from the predicted normal value. Therefore, this study provides strong evidence that respirable coal mine dust exposures under current conditions can cause clinically significant pulmonary effects. This evidence is confirmed and strengthened by evidence presented in Miller et al. (2007) and Attfield and Kuempel (2008) that the risk of mortality due to COPD increases significantly with increasing respirable coal mine dust exposure.

c. Mortality Due to NMRD

Some commenters acknowledged a strong exposure-response relationship between respirable coal mine dust exposure and mortality from nonmalignant respiratory diseases (NMRD) but claimed that the associations appear to be confined to high rank coal dust. According to these commenters, respirable coal mine dust exposure ''is strongly associated with significant excess NMRD mortality among anthracite coal miners,'' but this association ''is not found among miners of lower rank coals (bituminous and sub-bituminous).'' More specifically, the commenters stated that ''there appears to be no increased mortality risk of CWP associated with coal mined in eastern Appalachia, western Appalachia, and the Midwest.'' [21] To support this

[15] With regard to the probability of developing clinically relevant emphysema (i.e., emphysema associated with FEV_1 less than either 80% or 65% of predicted normal values, ''the contribution of cumulative dust exposure was greater than that of cigarette smoking at the cohort mean values, *although not significantly so* . . . [emphasis added]'' In the cohort used for the logistic regression analysis supporting this part of the analysis, mean cumulative respirable coal mine dust exposure was 87 mg-year/m^3 among miners and mean cigarette smoking was 42 pack-years. (Kuempel et al., 2009a).

[16] The relative magnitude of estimated coefficients of the emphysema severity index regression model for smoking history and respirable coal mine dust exposure should not be interpreted as representing the relative potencies of cigarette smoke and respirable coal mine dust as toxic agents. See Appendix J, Table 66 of the QRAs for the proposed and final rules. The estimated smoking history coefficient is 0.0099 (packs/day *X* years) and the estimated respirable coal mine dust coefficient is 0.010 (mg/m^3 *X* years). The magnitude of each coefficient depends on the choice of units used to represent exposure to the respective agent. For example, if the unit used to represent respirable coal mine dust exposure had been µg-year/m^3 instead of mg-year/m^3, then the estimated coefficient for respirable coal mine dust would have been approximately 1/1,000 of that for smoking. Furthermore, a ''pack-year'' does not represent the same duration of exposure as an occupational mg-year/m^3. A pack-year represents an average consumption of one pack of cigarettes per day for a year. Each pack normally contains 20 cigarettes. If it took an average of five minutes to consume each cigarette, then a pack-year would represent 36,500 minutes of exposure to cigarette smoke. In contrast, assuming 1,920 occupational exposure hours per year, each mg-year/m^3 represents 115,200 minutes of exposure to respirable coal mine dust (i.e., 1,920 hrs of exposure per yr *X* (60 minutes/1 hr) = 115,200 minutes of exposure per yr).

[17] With regard to the probability of developing clinically relevant emphysema (i.e., emphysema associated with FEV_1 less than either 80% or 65% of predicted normal values), ''the contribution of cumulative dust exposure was greater than that of cigarette smoking at the cohort mean values, *although not significantly so*. . . .'' In the cohort used for the logistic regression analysis supporting this part of the analysis, mean cumulative respirable coal mine dust exposure was 87 mg-year/m^3 among miners and the mean cigarette smoking was 42 pack-years (Kuempel et al. (2009a).

[18] Neither the standard deviation of cumulative exposure nor information on tenure in mining was reported for this subset of the study population.

[19] The coefficient of variation is the ratio of the standard deviation to the mean. The coefficient of variation is independent of the unit in which the measurement is taken, i.e., dimensionless. The coefficient of variation for the coal mine population in the logistic regression model is assumed to be the same as that for the entire miner study population in the Kuempel et al. (2009a) study.

[20] The log-normal distribution is a continuous probability distribution of a random variable whose logarithm is normally distributed. The distribution of respirable coal mine dust is not normally distributed; therefore, respirable coal mine dust was assigned a random continuous probability distribution termed the lognormal distribution represented by Log_e (respirable coal mine dust). The transformation was conducted to run parametric statistics models (i.e., model respirable coal mine dust with an analysis of variance (ANOVA), analysis of covariance (ANCOVA), and regression models). If X is Lognormally distributed with mean = 1.9 and standard deviation = 0.762, then $Log_e(X)$ is Normally distributed with mean = 0.585 and standard deviation = 0.380.

[21] The same commenters also claimed that ''Numbers were too small for a mortality analysis

Continued

conclusion, the commenters cited the results in Tables IX and X of Attfield and Kuempel (2008). These commenters also noted that the conclusion is based on only one mortality study, Attfield and Kuempel (2008), and proposed that NIOSH should test this observation by analyzing exposure-response trends by coal rank.

The study cohort in Attfield and Kuempel (2008) included a total of 8,899 miners from five coal mining regions across the U.S. There were 498 miners from the Anthracite region, 1,353 from the East Appalachia region, 4,886 from the West Appalachia region, 1,210 from the Midwest region, and 952 from the West region. Contrary to the commenters' interpretation, Tables IX and X of Attfield and Kuempel (2008) show a statistically significant increase in NMRD mortality associated with increasing respirable coal mine dust exposure in each of these five coal mining regions. The commenters' mischaracterization of the findings presented in Attfield and Kuempel (2008) appear to have resulted from two misinterpretations.

First, the relative risks shown in Table IX of Attfield and Kuempel (2008) for four of the five coal mining regions examined are expressed relative to the risks found for the fifth region (i.e., the West). Therefore, the fact that, except for Anthracite, the relative risks do not differ significantly from 1.0 means that only in the Anthracite region is the observed effect different from the effect observed in the West.[22] Although the effects observed in East Appalachia, West Appalachia, and the Mid-west do not differ significantly from those observed in the West, this does not imply that any of the observed effects are insignificant. Specifically, the ''four-fold increased risk of anthracite,'' shown in Table IX (op. cit.) as having a relative risk of 4.41, means that (all other factors being equal), the risk of NMRD mortality in the Anthracite region is probably four to five times what it is in the West (95% CI: 3.08–5.92). Since the analysis used to construct Table IX does not show any statistically significant difference between the West and any other region, except Anthracite, it shows *only* that NMRD risk in the Anthracite region is probably four to five times what it is in the other regions as a group. This says nothing about what the risk actually is in any of the regions, let alone the risk attributable to cumulative dust exposure.

Similarly, the regional coefficients shown for NMRD in Table X of Attfield and Kuempel (2008) pertain to NMRD mortality risks relative to the West region—this time based on a statistical analysis that treats cumulative dust exposure as a continuous variable. It is this analysis that is used to evaluate current and projected risk in the QRAs for the proposed and final rules.[23] For example, all other factors being equal, the relative risk (RR) in the ''Mid-west'' region is best estimated to be

$RR = e^{-0.2870} = 0.75$

There is considerable uncertainty in this particular estimate, so all that can be said with high confidence is that NMRD mortality risk in the Mid-west probably lies somewhere between 51 percent below and 12 percent above that in the West (95% CI: 0.49–1.12). However, just as NMRD mortality risk in the West depends on age, smoking history, and cumulative respirable coal mine dust exposure, so does NMRD mortality risk in the Mid-west. According to the analysis used to construct Table X, NMRD mortality risk is far greater in the Anthracite region than in any of the other four regions,[24] but that does not mean there is no risk in the other regions or that the other regions exhibit no relationship between NMRD mortality and cumulative respirable coal mine dust exposure.

Second, contrary to the commenters' interpretation, both Tables IX and X of Attfield and Kuempel (2008) show statistically significant increases in NMRD mortality with increasing respirable coal mine dust exposure for the region associated with lowest rank coal: The West. The estimated exposure-response relationship is modified in the other regions—amplified, relative to the West, in the East Appalachia and Anthracite regions and attenuated, relative to the West, in the West Appalachia and Mid-west regions. The following explication is based on Table X, since that is what is used in the QRAs for the proposed and final rules, but the same principles apply to interpreting Table IX.

Since the West region comprises the baseline in the relative risk model, no regional coefficient is applied for respirable coal mine dust exposures in the West. Therefore, using Table X, the relative risk of NMRD mortality, after a 45-year occupational lifetime of exposure to (low-rank) western respirable coal mine dust at a concentration averaging 2.0 mg/m^3, is estimated to be:

$RR = e^{-0.00709\,(45 \times 2.0)} = 1.89$

This means that the risk of NMRD mortality is estimated to be 89 percent greater for a miner who has been exposed to 90 mg-year/m^3 of respirable coal mine dust than for an unexposed miner of the same age, region, and smoking history. At a 45-year occupational lifetime average respirable coal mine dust concentration of 1.5 mg/m^3, the estimated relative risk is:

$RR = e^{0.00709(45\times1.5)} = 1.61$

Therefore, for respirable coal mine dust exposures in the West-region (where the coal is low-rank), increasing the lifetime average from 1.5 mg/m^3 to 2.0 mg/m^3 increases the estimated relative risk by 28 percentage points (i.e., (1.89–1.61)*100). According to Attfield and Kuempel (2008), the coefficient giving rise to this increase (0.00709) is statistically significant at a confidence level exceeding 99 percent. Therefore, contrary to the commenters' assertions, the Attfield-Kuempel analysis shows an increased risk of NMRD mortality associated with increasing respirable coal mine dust exposures in the region with lowest rank coal. Multiplying these relative risks by 0.75 (the regional factor for Mid-west coal) attenuates but does not eliminate, the estimated exposure-response relationship.

For exposures to the higher rank respirable coal mine dust in East Appalachia, the corresponding relative risks are:

$RR = e^{0.2187 + 0.00709(45\times2.0)} = 2.36$

at 2.0 mg/m^3 and

$RR = e^{0.2187 + 0.00709(45\times1.5)} = 2.01$

at 1.5 mg/m^3.

Therefore, increasing the cumulative exposure from 67.5 mg-year/m^3 to 90 mg-year/m^3 increases the estimated relative risk by an estimated 35 percentage points (i.e., (2.36–

of Western coal, which is the lowest ranked coal and presumably the lowest risk if the coal rank hypothesis is correct.'' This is incorrect. The study cohort described in Attfield and Kuempel (2008) included 952 miners from the West region, and the study found significant risk of NMRD mortality for miners exposed to respirable coal mine dust in that region. As will be explained below, NMRD mortality in the West region was used as a baseline for the relative risk of NMRD mortality in the other four regions.

[22] For regions other than Anthracite, the 95% CI in Table IX encompasses the number one (''1.0'') and is therefore not statistically significant—i.e., the study authors are not 95% confident that the effects in East Appalachia, West Appalachia, and the Mid-west region are different from that in the comparison region (the West).

[23] Appendix K of the QRAs for the proposed and final rules shows that for each regional coefficient (α), $RR = e^{\alpha}$, where $RR = e$ is the base of the natural logarithms. For the West region, $\alpha = 0$, so the baseline relative risk is $RR = e^{0} = 1$.

[24] Regional coefficients of the proportional hazards model are reported by Attfield and Kuempel (2008) in Table X as Anthracite (1.4844), East Appalachia (0.2187), West Appalachia (−0.3477), and Mid-west (−0.2870), relative to the West region. Therefore, applying the formula in Footnote 23, the relative risks are respectively estimated to be 4.41, 1.24, 0.71, and 0.75.

2.01)*100).[25] This shows that the estimated exposure-response relationship is steeper (positive slope) in East Appalachia than in the West, as reflected by the positive regional coefficient. For the Anthracite region, where coal has the highest rank, the estimated coefficient is substantially larger (Table X: 1.4844), so the slope of the estimated exposure-response relationship is far steeper than in East Appalachia or any of the other regions. Therefore, the commenters' interpretation that the Attfield-Kuempel 2008 study suggests that there is no increased risk associated with the lower-than-anthracite ranks of coal is not correct.[26]

In the QRA for the proposed rule, all work locations are classified as ''Low/Medium Rank,'' ''High Rank Bituminous,'' or ''Anthracite'' by a procedure described in Footnote 40 of that QRA. Appendix K of the QRA states that work locations included in the Anthracite and High Rank Bituminous categories are assigned coal rank coefficients of 1.4844 and 0.2187 (Table X), respectively. All other work locations are assigned a coefficient of zero. The resulting relative risk estimates for NMRD mortality under current exposure conditions are shown, by occupation, in Table 68 of the QRAs for the proposed and final rules. The fact that the underlying Attfield-Kuempel exposure-response model shows relative risk as increasing with increasing exposure levels—even for low/medium rank coal—can be seen by comparing relative risks in the QRAs' Table 68 to the corresponding exposure levels in the QRAs' Table 12.

As shown above and in Appendix K of the QRAs for the proposed and final rules, the Attfield-Kuempel exposure-response analysis does exactly what some of the commenters said is needed: Using geographic location as a proxy, it stratifies the analysis of NMRD mortality risk by coal rank. Though it may be prone to misinterpretation, that analysis identifies statistically significant and substantial NMRD mortality hazards not only for anthracite, but also for regions identified with high rank bituminous and lower rank coal.

2. Exposure-Response Models and Possible Threshold Effects

For each of the three adverse health conditions covered by the QRAs for the proposed and final rules (CWP, severe emphysema, and NMRD mortality), a previously published exposure-response model was used to quantify the excess risk associated with specified respirable coal mine dust exposures averaged over a 45-year occupational lifetime. Appendices I, J, and K in both QRAs describe the three models and explain, mathematically, how the models were applied to calculate risks. Some commenters objected to the use of these models for a variety of reasons. These objections will be addressed in the following subsections: (a) Attribution of Risk, (b) Bias due to Errors in Diagnosis, (c) Bias due to Errors in Exposure Estimates, (d) Threshold Effects, and (e) Model Consistency and Coherence.

a. Attribution of Risk

A commenter stated that regression equations do not necessarily express causal relationships and objected to the characterization in the QRA for the proposed rule of its underlying formulas as exposure-response relationships.

Although the misuse or misinterpretation of regression analysis can lead to groundless imputations of causal relations, regression analysis can properly be used to quantify a causal relationship that is known or believed to exist. As shown in the Health Effects section of the preambles to the proposed rule and in this final rule, there is ample toxicological and epidemiologic evidence to support a causal relationship between respirable coal mine dust exposures and the adverse health outcomes that have been identified. MSHA believes regression analysis was properly used and interpreted in the published studies on which the QRAs for the proposed and final rules rely. MSHA also believes that the resulting regression models express useful estimates of causal exposure-response relationships. In addition, while some commenters questioned the strength or shape of the exposure-response relationships, one commenter challenged the premise of a causal connection between respirable coal mine dust exposure and adverse health effects. The commenter provided a simple hypothetical regression analysis example. The example illustrates both (1) the danger of misidentifying a causal relationship by misinterpreting a regression result and (2) why MSHA believes the regression models used to quantify excess risk in the QRAs for the proposed and final rules express exposure-response relationships rather than spurious, non-causal associations.

In the commenter's example, the underlying basis of causal relationships is represented by two equations:

$$\text{Risk} = \text{Age} - \text{Exposure}$$

and

$$\text{Exposure} = 0.5 \times \text{Age}$$

The first equation specifies that in the hypothetical universe of this example, aging causes risk to increase, while exposure is protective and causes risk to decrease. The second equation expresses a causal relationship between age and exposure: Each year of aging causes an increase of 0.5 exposure units.[27] Combining these two equations, risk can be expressed as either,

$$\text{Risk} = \text{Age} - (0.5 \times \text{Age}) = 0.5 \times \text{Age}$$

or, as the commenter chose to do for the sake of example,

$$\text{Risk} = (2 \times \text{Exposure}) - \text{Exposure} = \text{Exposure}$$

Now, if a researcher were to compile data on risk and exposure in this hypothetical universe, and then perform a regression analysis on these data (ignoring age), the result would be, as indicated by the commenter, a spurious (i.e., non-causal but mathematically correct) relationship of the form

$$\text{Risk} = 1 \times \text{Exposure}$$

where ''1'' is derived from the analysis as the estimated regression coefficient. Because of this, and the fact that the QRA relies on regression models, the commenter concluded that MSHA's projected changes in risk are meaningless.

The commenter, however, did not present a full analysis in the example. If the researcher suspected that Age (but not exposure) was causally connected to Risk, then this would presumably motivate the researcher to compile data on Age and perform the regression analysis on that variable. The result would properly express the causal exposure-response relationship:

$$\text{Risk} = 0.5 \times \text{Age}$$

In this case, the regression analysis would yield ''0.5'' as the estimated coefficient of Age, thereby correctly determining the slope of the causal exposure-response relationship. A researcher might also perform an exploratory, multiple regression analysis using all of the available data, including both Age and Exposure as candidate predictor variables. In this event, calculation of the regression coefficients would be computationally intractable if the data contained

[25] The mg-year/m^3, 45-yr occupational lifetime average, is calculated from the mg/m^3 dust concentration. Where 67.5 mg-year/m^3 = 1.5 mg/m^3 × 45 yr occupational lifetime average and 90 mg-year/m^3 = 2.0 mg/m^3 × 45 yr occupational lifetime average.

[26] The commenters also stated that the exposure estimates used by Attfield and Kuempel (2008) are biased in such a way as to ''increase the exposure response slope.'' This comment is discussed in Section III.B.2.c.

[27] Aging might be said to *cause* exposure if exposure accumulates unavoidably as time passes. Exposure to cosmic radiation is a possible example.

absolutely no measurement errors.[28] If, more realistically, the data did contain measurement errors, then the regression analysis would yield a relationship with estimated coefficients of the following form:

$$\text{Risk} = a_1 \times \text{Age} + a_2 \times \text{Exposure}$$

where the regression estimates, a_1 and a_2, would generally be close to +1 and −1, respectively, but could differ from these values by amounts dependent on the error structure. So, rather than showing that regression invariably produces spurious relationships, the commenter's example illustrates the importance of taking all relevant variables into account. When properly executed on the relevant data, regression analysis provides a valid means of estimating the parameters of causal exposure-response relationships.

MSHA believes that the exposure-response models on which the QRAs for the proposed and final rules rely were derived from regression analyses properly executed on the relevant data. The causal connections with respirable coal mine dust exposure are supported by evidence from independent studies,[29] and the effects of age and other correlates (such as coal rank and smoking history when available) were simultaneously estimated. All three studies (Kuempel et al., 2009a, 2009b; Attfield and Kuempel, 2008) found both age and cumulative respirable coal mine dust exposure to be statistically significant factors in predicting the probability of adverse health effects. Other factors (such as smoking history, coal rank, and race) were incorporated into the exposure-response models when they were found to be statistically significant.

The commenter disagreed with MSHA about the utility of the specific regression models on which the QRA for the proposed rule relied, and the relative importance of possibly relevant factors that were not included—either because the factors were not deemed relevant by the studies' authors or because the necessary data were unavailable. The commenter proposed that socioeconomic and demographic factors that may affect exposure or risk (such as age, seniority, education, income, and access to medical care) be included in the models and used in the calculation of partial attributable risks. The commenter suggested that neglecting such variables could lead to spuriously high estimates of health risks due to exposure.

As indicated above, age was accounted for in all of the models used in the QRAs for the proposed and final rule). Some socioeconomic factors may have been represented, to an unknown extent, by coal mining region in the CWP and NMRD mortality studies and by race in the emphysema study. Risks in the CWP and emphysema studies were attributed to exposure based on internal comparisons with miners in the same cohort experiencing relatively little or no exposure. Variation in respirable coal mine dust exposure among miners within mining regions is unlikely to be related to socioeconomic differences. Therefore, socioeconomic differences among miners within regions are unlikely to explain the risk attributed to exposure (i.e., the difference between risk expected with and without the exposure, after adjustment for age and coal mining region or race). MSHA recognizes that the regression models may have been improved by explicit consideration of various socioeconomic factors. However, no such studies have been published, and the commenter provided no evidence that including such variables would have a significant impact on the estimated effects of respirable coal mine dust exposure.

Similarly, other commenters identified a number of factors that were not modeled in the regression analyses but could potentially contribute to the observed frequency of adverse health effects. These included silica content of the respirable coal mine dust, coal rank, mine size, and seam height.

Coal rank was not considered in the emphysema study, but it was represented by a surrogate mdash;coal mining region—in the CWP and NMRD mortality studies. Mine size may, to some degree, be correlated with socioeconomic characteristics, but the only evidence of its relevance pertains to its correlation with exposure levels: As shown in their comment, exposures tend to be greater at smaller mines. Therefore, accurate exposure estimates should include the contribution of mine size to health risks.[30] Similarly, seam height may be related to socioeconomic characteristics, but the only known effect it has on respiratory health arises through its impact on silica content of the respirable coal mine dust: As pointed out in their comment, thin seams require mining a higher proportion of stone than thick seams. This leaves silica content of respirable coal mine dust as a potentially important variable that was not included in the regression models used in the QRA.

MSHA agrees that including silica exposures as a covariate would have improved the credibility of these models. There are no alternative studies on U.S. exposures that do so. However, Miller et al. (2007), using data from British coal mines, conducted two separate analyses on mortality due to CWP and mortality due to COPD, both of which simultaneously examined silica exposures and respirable coal mine dust exposures as candidate predictor variables. Both of these analyses showed a stronger association with respirable coal mine dust than with quartz, and including both variables in the models, resulted in approximately the same regression coefficient for respirable coal mine dust exposure as when silica exposure was excluded.[31] Furthermore, the models containing both silica and respirable coal mine dust exposures resulted in estimated regression coefficients for silica exposure that were not statistically significant. In contrast, the estimated coefficients for respirable coal mine dust exposure were statistically significant at a high confidence level (>99.9 percent) regardless of whether silica exposure was included. These analyses were used in the QRAs for the proposed and final rules to confirm the significance of respirable coal mine dust exposures below the existing standard. (See Figures 12 and 15 in both QRAs.)

Although the possible confounding effects of tobacco smoking were addressed in all of the studies used in the QRAs for the proposed and final rules, one commenter objected to the use of ''smoking patterns that held decades ago'' in formulating exposure-response relations applicable to current or projected conditions. This commenter stated that because of curvature in the joint exposure-response relationship for severe emphysema (described in Appendix J of the QRA), part of the risk of severe emphysema attributed to respirable dust exposure

[28] This is because it would not be possible to invert the so-called X′X matrix, given the unvarying interdependence of *Age* and *Exposure.*

[29] See the Health Effects Section of the preamble to the proposed rule.

[30] Potential biases in the exposure estimates are addressed in Section III.B.2.c below.

[31] Though remaining *approximately* the same, the estimated regression coefficients for respirable coal mine dust exposure actually *increased* slightly when silica exposure was included in the model. For CWP mortality, the regression coefficient for respirable coal mine dust exposure was 0.0058 when quartz exposure was excluded and 0.0060 when quartz exposure was included (Miller et al. (2007), Table 5.9). For COPD mortality, the coefficient for respirable coal mine dust exposure was 0.0016 when quartz exposure was excluded and 0.0019 when quartz exposure was included. (Miller et al. (2007), Table 5.18). Exposure units for both respirable coal mine dust and silica were g-hr/m^3. Predicted effects are on the natural logarithm of relative risk.

depended on smoking patterns that no longer exist.

MSHA addressed this issue in both QRAs by basing its estimates of excess risks of severe emphysema attributed to respirable coal mine dust exposure only on the results obtained for never-smokers.[32] This was done partly to avoid the amplification effect of smoking noted by the commenter. Likewise, the estimated excess risks of CWP and NMRD mortality attributed to respirable coal mine dust exposure are independent of smoking effects.

The commenter also used the relatively large regional background effect estimated by one of the models to suggest that a causal interpretation of the QRA's regression models is not justified. One of the exposure-response models used in the QRAs for the proposed and final rules, namely the Attfield-Kuempel NMRD mortality model, does assign a ''background'' relative risk of 4.4 to miners in the Anthracite region (Attfield and Kuempel (2008), Table IX).

As stated in the QRA for the proposed rule, Appendix K (p. 135), ''This suggests that the regional effects [as estimated using the model] are primarily due to geographic factors other than coal rank.'' However, it does not undercut a causal interpretation of the model's result for respirable coal mine dust exposure. Study demographics affirm that only 5.6 percent of the study group resided in the Anthracite region (Table III–7). Furthermore, a causal interpretation is supported by the results for NMRD mortality vs. respirable coal mine dust exposures found by Miller et al. (2007, Table 5.10), in which the regional and/or coal rank issue did not arise. Attfield and Kuempel (2008) recognized that in their analysis, ''variations in lifestyle, health care, and non-coalmine exposures across geographical regions are . . . confounded with coal rank. . . .'' Nevertheless they concluded that ''the findings confirm and enlarge upon previous results showing that exposure to coal mine dust leads to increased mortality, even in the absence of smoking.'' After consideration of the commenters' views, MSHA continues to agree with these conclusions from Miller et al. (2007) and Attfield and Kuempel (2008).

b. Bias due to Errors in Diagnosis

Other commenters stated that inaccuracies in diagnosing CWP and PMF by means of chest X-rays during the fourth Round of the NCWHSP invalidate the exposure-response relationships used in the QRA for the proposed rule. These commenters also stated that the adjusted summary prevalence for the percentage of combined opacities in the original readings for Round 4 using ILO 1980 was 2.3% for category 1+ and 0.3% for category 2+ and that the re-readings using ILO 1980 were 22.5% and 0.91% for categories 1+ and 2+, respectively. From this, they inferred that the results from re-reading the NCWHSP x-rays were no more reliable or valid than the original readings and therefore do not represent prevalence of disease.

Accuracy of the Round 4 X-ray readings pertains only to the exposure-response relationships used for CWP and not for severe emphysema or NMRD mortality. Furthermore, imprecision in the readings would not bias the logistic regression results for CWP used in the QRAs for the proposed and final rules, since the readers were unaware of respirable coal mine dust exposures for the miners whose X-rays they were reading. Therefore, errors in the readings due to imprecision would have been uncorrelated with exposure and so should not have appreciably affected the regression estimates. In addition, imprecision of the readings was reduced by using the median category assigned by three specially selected B-readers. Potential bias was mitigated by specifically selecting the three readers to be ''representative of B-readers in general (i.e., avoiding extremes of interpretation)'' (Attfield and Seixas, 1995). The commenters present no evidence of any bias in these readings.

MSHA believes that disagreement between results from the original readings of Round 4 x-rays and the re-readings does not imply that the re-readings were ''no more reliable or valid than the original readings. . . .'' The team of three B-readers who performed the re-readings were selected because they were highly experienced (having read at least 500 films during Round 4) and, based on a preliminary reading trial, were the least likely to give extreme interpretations among readers meeting the other selection criteria. More importantly, the opacity prevalences shown by the commenters are for ''combined opacities,'' a category that includes both rounded and irregular opacities. Unlike small rounded opacities, small irregular opacities are not generally associated with simple CWP; and for small rounded opacities, much closer agreement was reported between the original readings and the re-readings. For CWP1+, prevalence was 1.3% in the original Round 4 readings and 2.1% in the re-readings of the same Round 4 X-ray films (Goodwin and Attfield, 1998).

Furthermore, Attfield and Seixas (1995) reported good agreement in the prevalences of CWP1+ found by the three readers used in their analysis of the Round 4 data: 7%, 7%, and 9%. They also reported that ''this similarity persisted when the data were tabulated by deciles of estimated dust exposure. . . .''

As reported in Attfield et al. (1997), a randomly selected subset of 2,380 x-rays from Round 1 of the NCWHSP were re-read by three readers who were selected to be representative of reader participants in the surveillance program. The median determinations of these re-readings were used to re-estimate exposure-response relationships for comparison with the corresponding results reported in Attfield and Morring (1992a). Although the intercepts (i.e., the predictions of background risk at no respirable coal mine dust exposure) were significantly different, ''the logistic [regression] coefficients from the two studies for cumulative exposure were almost identical (0.008 for the original study and 0.010 for the re-readings)'' (Attfield et al., 1997, p. 343). Consequently, estimates of excess risk attributable to respirable coal mine dust exposure (obtained by subtracting the intercept from the risk predicted at a specified exposure level according to the same analysis) would be similar regardless of whether the original readings or the re-readings were used.[33]

c. Bias Due to Errors in Exposure Estimates

Biases in respirable coal mine dust exposure estimates could enter into the analyses in the QRAs for the proposed and final rules in a variety of ways. Bias may enter either into the exposure estimates used in the epidemiologic studies on which both QRAs rely or into the QRAs' estimates of current exposures. Since the QRAs' projections of exposures under the proposed and final rules are formed by modifying the estimates of current exposures, biases in current exposure estimates would also affect the projections.

The estimates of current exposures in the QRAs for the proposed and final rules are formulated primarily from MSHA inspector samples, but they are supplemented by operator samples for

[32] See the QRA for the proposed rule, pp. 53, 74, 131–132, captions to Tables 15, 24, and footnote to Table 28.

[33] Because of the upward curvature in the logistic regression model, estimated excess risk would be slightly higher using the analysis yielding a higher intercept than if the two analyses yielded identical regression coefficients for respirable coal mine dust exposure.

work locations where fewer than two (i.e., only one or zero) valid inspector sample is available for the base year, 2008. The current exposures estimates are also adjusted upwards for certain work locations where there is some evidence that relatively high respirable coal mine dust levels have been temporarily reduced in the presence of an MSHA inspector.[34] The procedure used to form the adjusted, supplemented (AS) estimates, and the rationale behind it, are described in the QRA for the proposed rule on pages 24–25 and in Appendix F. The effect of these adjustments on exposure estimates is discussed on page 26 of the QRA for the proposed rule and summarized in Figures 8 and 9 of the QRAs for the proposed and final rules, which compare the AS estimates against the generally lower unadjusted estimates drawn entirely from inspector samples. As explained in the QRA for the proposed rule Footnotes 26 and 28, and supported by the statistical analysis in Appendix E(c) of the QRAs for the proposed and final rules, MSHA believes that the adjustments do not introduce bias into the AS exposure estimates, but rather compensate for pre-existing downward biases in both the inspector and operator sampling data.

Some commenters disagreed with MSHA's AS estimates stating that the QRA's adjustment process systematically overestimates exposures, even when the original exposure estimates are unbiased.'' According to this commenter, the AS procedure ignores or denies ''the obvious possibility that the operator samples may sometimes be too high''.

It is not MSHA's objective in using the AS estimation procedure to derive unbiased estimates for individual work locations. Instead, the objective is to improve the accuracy of the estimated mean for a group of related work locations (e.g., all continuous mining machine operators or all continuous mining machine operators at high rank bituminous coal mines). MSHA agrees that the adjustments may result in overestimates of exposure at individual work locations, but it is only the mean exposure, estimated across an entire group, that is included in the risk calculations in the QRAs for the proposed and final rules.

Based on evidence cited in the QRAs, MSHA believes that mean exposure levels, across groups of work locations, are underestimated by both the inspector and the operator sampling data. The commenter did not address this evidence and suggested instead that the adjustments were made ''unjustifiably . . . to correct for possible occasional underestimation of true exposures . . . but without performing any symmetrical adjustments to correct for equally possible occasional overestimation of true exposures.'' MSHA does not agree that respirable coal mine dust samples, whether they are collected by inspectors or by operators, are equally likely to overestimate or underestimate mean exposure levels. Instead, MSHA believes that the unadjusted means are biased downward precisely because respirable coal mine dust concentrations on sampled shifts are more likely to be below the mean than to exceed it. This was a principal motivating factor behind development of the continuous personal dust monitor.

Moreover, MSHA made corrections for occasional overestimation of exposures. For example, the QRAs for the proposed and final rules exclude repeated inspector samples at work locations exhibiting high Day-1 measurements and adopt a weighting procedure designed to avoid biasing the estimates toward work locations targeted for more frequent dust inspections because of their relatively high respirable coal mine dust measurements. These adjustments resulted in reducing estimates of respirable coal mine dust concentrations more than the AS procedure increased them.

In addition to evidence of underestimation cited in the QRAs, Boden (1986) noted that mine- and job-specific distributions of respirable coal mine dust concentrations compiled from operator compliance samples in 1970 to 1977 contained greater than expected numbers of low measurements compared to fitted lognormal distributions. Attfield and Morring (1992a) reported the same general tendency. These findings are further support of the QRAs' use of the AS estimation procedure.

MSHA agrees with the commenter that there may be work locations where inspector samples are perfectly representative, statistically, of normal conditions. However, MSHA believes that making a relatively small upward adjustment for roughly half of any such work locations hardly compensates for other work locations at which inspector samples and operator samples are both biased downward. Figures 8 and 9 in the QRAs for the proposed and final rules show that the impact of these adjustments on estimated means is not excessive compared to the downward biases that have been reported. As stated in Footnote 28 of the QRA for the proposed rule,

> MSHA recognizes that the AS estimates may be biased relative to mean exposure levels . . . on those shifts sampled by MSHA inspectors . . .. However, the objective is to obtain the best possible estimate of mean exposure across all shifts within groups of related work locations, and not just those shifts that are sampled by an MSHA inspector. Accordingly, MSHA believes that its use of operator data in the AS estimation procedure as applied to specific work locations serves to reduce rather than increase the potential for overall bias.

Systematically increasing exposure estimates is not the same thing as systematically over-estimating exposures. These increases may well be insufficient to fully compensate for the downward bias in respirable coal mine dust samples as a representation of respirable coal mine dust concentrations.

Commenters stated that another limitation of the AS estimation procedure was that there was no symmetrical counter-adjustment in the estimated effects of exposure used in the QRA's exposure-response models. The commenter stated that when exposure estimates are adjusted upward, then potency estimates should be symmetrically counter-adjusted downward to avoid biasing risk estimates upward.

The commenters assumed that a downward bias in exposure measurements was not accounted for in estimating the exposure-response relationships. As described in Seixas et al. (1991), respirable coal mine dust concentration measurements obtained at the mining face were, for the NCWHSP, adjusted upward by 13 percent to compensate for a downward bias judged to exist in the operator sampling data used.[35] These adjusted exposure values

[34] Some commenters mistakenly stated that MSHA did not adjust the AS estimates when the inspector samples are higher. However, whenever only one valid MSHA sample was available for a work location, operator samples were used in addition to the MSHA sample, regardless of whether the MSHA measurement was higher or lower than the operator average. As to other aspects of the AS estimates, these commenters recognized that MSHA's ''approach was motivated by the concern that dust levels are temporarily lowered when MSHA inspectors are present . . . '' but stated that ''when the operator data are higher than the inspector data, MSHA has no real evidence that this is because of extra control efforts during the inspector sampling.'' MSHA's objective in using the AS estimates is to estimate conditions on all shifts, not just shifts that were sampled by MSHA or operators or both. Since evidence of bias exists in both the inspector and the operator samples (see the QRAs for the proposed and final rules, pp. 24–25 and Appendix E), the AS estimation procedure was deliberately designed to compensate for bias in samples from both sources.

[35] Other adjustments described in Seixas et al. (1991) were designed to compensate for specific

were then applied to both the pre- and post-1970 exposures used in the development of cumulative exposure estimates for all of the exposure-response relationships on which the QRA for the proposed rule relies.

In response, MSHA notes that since respirable coal mine dust concentrations measured at the face are generally far higher than those measured at other work locations, they dominate in determining regression estimates of the exposure effects. Hence, the 13-percent upward adjustment in exposures resulted in a corresponding reduction of estimated potency, just as the commenter suggested. This 13-percent adjustment correlates well with the overall impact of applying the AS estimation procedure (see Figures 8 and 9 in the QRAs for the proposed and final rules).

After cautioning that errors in estimated exposures could (theoretically) bias the QRA's estimates of risks attributable to the exposures, the commenters suggested that ''an unknown fraction (up to 100%) of the risk attributed to differences in exposures may in reality be due to unmodeled errors in exposure estimates and covariates . . . .''

MSHA recognizes that any unknown fraction may be as high as 100 percent or as low as zero percent. However, the commenters did not submit any calculations showing how large or widespread the measurement errors would need to be to account for a significant portion of the differences in prevalence of adverse health effects observed for study subjects having categorically different estimated exposures. Nor did the commenters provide any evidence that any errors in the estimated exposures used to establish the exposure-response models in the QRA for the proposed rule were of a type that would increase, rather than occlude, the estimated effects of respirable coal mine dust exposure.[36]

Other commenters stated that there was a specific systematic error in estimates of pre-1970 exposures that tend to exaggerate the effects of respirable coal mine dust exposure in the Kuempel pulmonary response model for severe emphysema, the Attfield-Kuempel NMRD mortality model, and (to a lesser extent) the Attfield-Seixas CWP models.

In response to commenters' concern, MSHA notes that the epidemiologic studies that produced these models relied on estimates of pre-1970 exposure levels for specific jobs. These estimates were formed by combining exposure measurements collected in 1968–1969 by the U.S. Bureau of Mines (BOM) with measurements collected by mine operators in 1970–1972. The U.S. BOM dataset contained data for certain jobs at the mining face but little or no data for most other underground jobs and no data at all for any surface jobs. Therefore, in order to compile lifetime cumulative exposures for each miner included in the epidemiologic studies, job-specific mean respirable coal mine dust concentrations observed in the 1970–1972 operator data were multiplied by a factor of 2.3. This factor ''was obtained averaging ratios of job-specific BOM dust means to 1970–1972 MSHA concentrations for every occupation where there were sufficient U.S. BOM data (n > 10 samples)'' (Attfield and Morring, 1992a). All exposures for miners after 1972 were estimated using the job-specific means calculated each year from the operator data.

According to these commenters, the estimates of each miner's pre-1970 exposures are biased relative to the U.S. BOM data and elevate the slope of the exposure-response curve and reduce thresholds of effect, thereby spuriously overestimating risk. Since they were based on an average ratio rather than job-specific ratios, pre-1970 exposures were generally underestimated in high-exposure jobs and overestimated in low-exposure jobs. According to the commenters, this resulted in underestimating total cumulative exposure for the most highly exposed miners and overestimating total cumulative exposure for the least exposed miners, thereby giving rise to a ''spuriously steeper slope'' in the estimated exposure-response relationships derived from these data.

The use of the mean ratio to estimate job-specific occupational exposure averages prior to 1970 was justified by Attfield and Morring (1992a) by four factors. First, a large part of the job-to-job variation in the ratio of pre-1970 BOM exposure data to 1970–1971 mine operator exposure data is probably of random origin, especially for jobs with relatively few BOM samples. Based on standard errors for the ratios' numerators, 95% confidence intervals included the value 2.3 (i.e., the mean ratio used in the back-extrapolation) for 13 of the 25 ratios for the jobs shown in Table I of Attfield and Morring (1992a).

Second, for some of the remaining jobs, the mean of 2.3 was believed to be more valid than the actual, observed, job-specific ratios. For example, BOM data show pre-1970 dust levels were less than or equal to levels shown by the 1970 and 1971 data for the supply man and utility man jobs. In the opinion of Attfield and Morring, this did not seem reasonable.

Third, the necessity of pooling individual MSHA jobs into the broader Lainhart categories for matching with the work histories resulted in reduced variation of dust levels across Lainhart job groups compared to individual MSHA jobs. This brought the job-specific ratios based on Lainhart categories (which Attfield and Morring considered to be of more practical relevance than the individual MSHA jobs cited by the commenters) closer to the mean of 2.3 used in the exposure derivation.

The last of the four factors proposed by Attfield and Morring concerns the results of attempting to derive exposure estimates based on variable ratios. The actual BOM job means were used directly to estimate the exposures, with MSHA data being used only to fill in the gaps. The resulting exposure estimates had a mean and standard deviation of 100 and 79 g-hr/m^3, respectively, and were highly correlated with those developed by using the common ratio (Pearson correlation = 0.95). Use of these data in exposure-response analyses did not realize any advantages. In another attempt, a set of pre-1970 dust exposure estimates was generated by using variable ratios derived from a nonlinear regression model. The resulting exposure estimates did not correlate better with medical indexes in analyses of exposure-response.

MSHA agrees with Attfield and Morring that the first three factors support their use of the common average ratio. However, their fourth factor may support the position taken by commenters that use of this constant ratio artificially inflates the slope of the exposure-response regression line. This would be the case if the criterion for ''realizing any advantages'' and correlating ''better'' is simply that the estimated slope is steeper (and therefore more evident) than the slope obtained using the constant ratio. It is not clear from Attfield and Morring (1992a) what the criterion actually is.

biases introduced, at the time of the NCWHSP, by MSHA's analytical and data processing procedures for determining respirable coal mine dust concentrations from gravimetric samples. These biases have long since been eliminated, as documented in the **Federal Register** notice MSHA published jointly with DHHS on July 7, 2000 (65 FR 42068). Therefore, corresponding adjustments are not necessary for the 2004–2008 data used in the QRAs.

[36] Errors due to imprecision of the sampling device (cyclone, pump, and weight gain determination) are *not* of a type that would increase estimated effects of respirable coal mine dust exposure. Since they are independent of the underlying exposures, having more errors of this type merely raises the threshold on how steep the response must be for the relationship to be detectable.

MSHA believes that both the commenters and Attfield and Morring (1992a) overlooked an important factor mitigating any bias introduced into cumulative exposure estimates by use of the common ratio: Namely, that miners generally did not continue to work in a single occupation for their entire lifetimes. In another context, Attfield and Morring (1992a) state: ''. . . few miners spent all of their working life in the dustiest jobs, hence heavy exposures received while performing those jobs were usually diluted by the exposures caused by work in less dusty jobs'' (op cit, p. 252). Likewise, some of a miner's occupations would have a below-average ratio while others would have an above-average ratio. Therefore, job-related exposure biases introduced into the exposure history of an individual miner would tend to compensate for one another; and estimates of overall cumulative exposure would be expected to approach the correct value as the number of individual jobs held increased. For this reason, along with those provided by Attfield and Morring, MSHA believes that bias due to use of a common ratio for back-extrapolation had only a minor impact, if any, on the estimated exposure-response relationships.

Some commenters also stated that the Attfield and Kuempel (2008) NMRD mortality study had another bias, related to incomplete work history data, that could potentially bias exposure-response associations by under-estimating exposure and over-estimating risk.

After acknowledging that ''up to 23 years of exposure may have been omitted from a miner's exposure,'' Attfield and Kuempel (2008) addressed potential impact of exposure misclassification on their results. According to Attfield and Kuempel, any such impact was mitigated by several factors. First, dust exposure levels in U.S. mines were mandated to be much lower after 1969; data indicates that levels had dropped by 1975 to less than one-third to one-quarter of pre-1969 levels, with most of the drop happening in the period 1970–1972 [Attfield and Morring, 1992b]. A miner's post-1970 exposure would generally have contributed a relatively small percentage of total exposure. Second, the workforce had an average age of 44.5 at the start of follow-up, meaning that many in the study cohort would be likely to retire early in the follow-up period, again limiting the potential for misclassification. Third, although younger miners have the most potential for misclassification in their exposures since their tenure during follow-up may have been as long, or longer than, their pre-follow-up tenure, very few NMRD deaths occurred in younger miners. Only 6% of the total NMRD deaths occurred in miners younger than 45 years of age at start of follow-up, while 19% occurred in miners younger than age 50. The impact of exposure misclassification during follow-up was assessed by restricting the analysis to miners aged 50 years or older at start of follow-up. Use of the proportional hazards model on NMRD on this subgroup gave rise to a relative risk of 1.006 per mg-year/m^3 ($p<0.0001$), which is similar, but slightly smaller than that for all workers (relative risk=1.007). According to Attfield and Kuempel, these findings do not absolve the results from the effects of exposure misclassification, but the findings do indicate that any effect is limited and ''much less than might be suggested by first appearances.''

Although Attfield and Kuempel characterize the issue as one of ''exposure misclassification,'' this is somewhat misleading, since the missing exposures are systematically set to the lowest possible value (zero) rather than to various values randomly drawn from the distribution of exposure levels. Consequently, the effect is not ''possible attenuation of the exposure-response relationship,'' as Attfield and Kuempel suggest, but, to the contrary, an inflation of the relative risk associated with each unit of exposure, as suggested by these commenters. The three mitigating factors cited by Attfield and Kuempel reduce the effect of this bias, but they do not completely eliminate it.

Only part of the impact of excluding exposures experienced after 1970 is revealed by restricting analysis to workers aged 50 or greater at the start of follow-up, as described by Attfield and Kuempel above. Although these workers were older than the average age of the cohort, it can reasonably be presumed that many of them still accumulated significant exposures after 1970. Therefore, the restricted analysis does not show the full impact of the bias. Nevertheless, even the partial impact is greater than Attfield and Kuempel suggest by comparing the relative risks estimated for a single mg-yr/m^3 of exposure. Over a 45-year occupational lifetime, exposure to low rank (West region) respirable coal mine dust at an average concentration of 2.0 mg/m^3 produces an estimated relative risk = $e^{90\times0.00709}$ = 1.89 based on the full analysis and relative risk = $e^{90\times\mathrm{Log}_e(1.006)}$ = 1.71 based on the partial analysis.[37] This discrepancy of over 10 percent demonstrates a substantial overestimate of the risk attributable to respirable coal mine dust exposure. Eliminating the bias entirely would almost certainly reduce the estimated relative risk even further.[38]

MSHA agrees that setting all exposures experienced after 1970 to zero has inflated the Attfield-Kuempel estimates of NMRD mortality risk attributable to respirable coal mine dust exposure. However, based on the discussion above, MSHA sees no evidence that this bias is entirely or even mostly responsible for the observed relationship between respirable coal mine dust exposure and NMRD mortality risk. Still, the bias may help explain why the Attfield-Kuempel relative risk estimates are so much greater than corresponding estimates based on the research reported by Miller et al. (2007), as shown in Figure 15 for COPD mortality in the QRAs for the proposed and final rules. Accordingly, MSHA is reducing the coefficient of respirable coal mine dust exposure used to estimate NMRD mortality relative risk (hazard ratios) by one-third. This brings the coefficient down to a value of 0.0048, which is halfway between the original Attfield-Kuempel estimate of 0.00709 and the Miller estimate of 0.0025.[39]

d. Threshold Effect

One commenter suggested that the majority of cases of respirable coal mine dust-related disease observed in miners is due to high multiples of average exposures (perhaps 5 to 10 times). The commenter stated that miners in this upper end of the exposure distribution contribute disproportionately, and perhaps exclusively to the number of observed cases. Since current average respirable coal mine dust concentrations exceed 0.5 mg/m^3 for nearly all underground face occupations (see Figure 7 in the QRAs for the proposed and final rules), the commenter considered concentrations of 2.5 mg/m^3 or less (i.e., anything less than a five-fold multiple of the average) to be generally benign. However, the

[37] The average respirable coal mine dust concentration of 90 mg-yr/m^3 is calculated by multiplying 2.0 mg/m^3 by 45 yr occupational life.

[38] All of the discussion and calculations in this paragraph pertain to estimated NMRD mortality risks.

[39] The Attfield-Kuempel estimate is shown in Table X of Attfield and Kuempel (2008) and Appendix K of the QRA for the proposed rule. The Miller estimate was derived by multiplying 0.0013 (i.e., the coefficient of respirable coal mine dust exposure shown in Model NMRD/05 of Miller et al. (2007) by 1,920 hr/yr and dividing by 1,000 mg/m^3.

commenter cited no toxicological or epidemiological evidence to support this hypothesis with respect to respirable coal mine dust exposures.

The commenter suggests that only respirable coal mine dust concentrations above a threshold level can cause adverse respiratory health effects, and that exposure-response relationships for respiratory diseases must model a threshold effect. The commenter was correct in noting the QRA's exclusive reliance on threshold-free risk models. However, the commenter cited no alternative, empirically-derived threshold models applicable to risks specifically due to respirable coal mine dust exposures, and provided no evidence to support the premise that respirable coal mine dust is toxic only when exposures exceed a threshold level.[40] Although the QRA did not discuss the evidence for or against thresholds, the applicability of threshold models to respirable coal mine dust exposures has been investigated in the published literature.

The possibility of an exposure threshold for CWP response was investigated and rejected in Attfield et al. (1997). In the explanation from the Attfield article below, TLV represents a possible threshold limit value.

> Determination of the existence of a threshold effect, through use of the transformation
>
> $CE - (CE - TLV) \cdot H(CE - TLV)$,
>
> Where CE is cumulative exposures and $H(CE - TLV) = 0$ if $CE < TLV$, and 1 otherwise, was examined using the χ^2 value for the coefficient for transformed exposure variable.
>
> Figure 1 shows a plot of this statistic for three outcomes: category 1+, category 2+ and PMF for a range of TLV from 0.0 to 2.0 $mg \cdot m^{-3}$. It is clear from this figure that there was little convincing indication of a threshold. For category 1+ and PMF, χ^2 peaked close to 0 $mg \cdot m^{-3}$, while for category 2+ the peak was near to 1.0 $mg \cdot m^{-3}$ but the curve was virtually flat, suggesting great uncertainty in the location of any threshold. Use of the log-likelihood value in place of χ^2 suggested even less evidence for a threshold. In other analyses . . ., rather than a threshold, there was evidence of a non-zero baseline of response at zero dust exposure.

Figure III–1 is reproduced from Figure 1 of Attfield et al. (1997) and shows why the authors concluded that the evidence failed to support a threshold effect (no threshold effect existed at or above 1.0 mg/m^3).

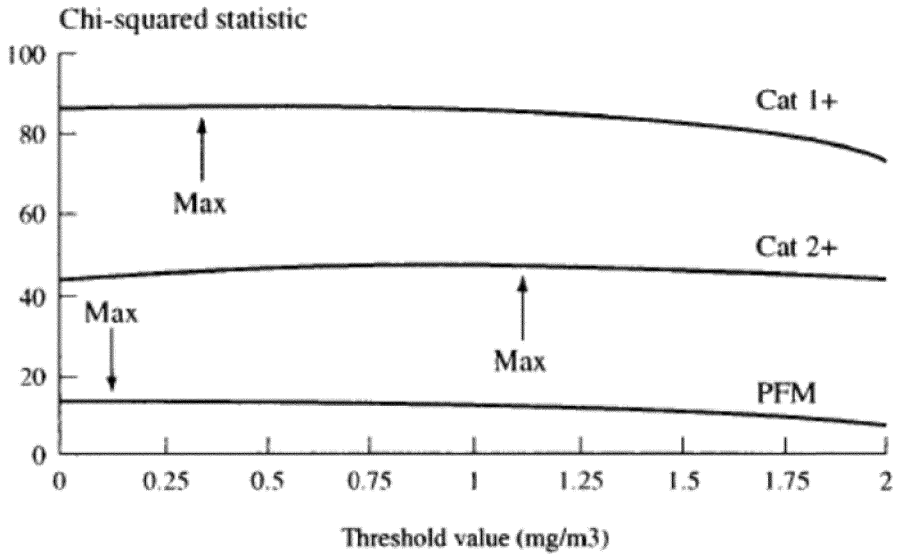

Figure III–1—Examination of threshold. Plot of χ2 statistics against candidate threshold limit values for category 1 +, category 2+ and PMF, reproduced from Figure 1 of Attfield et al. (1997). PMF was mislabeled as "PFM" in the original Figure

Bailer et al. (1997) examined several alternative models, including threshold models, for describing exposure-response relationships between respirable coal mine dust and FEV_1 deficits among miners who participated in Round 1 of the NCWHSP. For FEV_1 less than 80% of the predicted normal value, a threshold was suggested at a cumulative exposure of 22.0 mg-yr/m^3.[41] This corresponds to exposure at an average respirable coal mine dust concentration of 0.5 mg/m^3 over a 45-year occupational lifetime.[42]

Based on its review of the available evidence included in the QRAs for the proposed and final rules and the Health Effects section of the preamble to the proposed rule, MSHA has determined that the best available epidemiological evidence fails to support a threshold model for either CWP or clinically significant pulmonary effects due to respirable coal mine dust exposures. The evidence indicates that if an exposure threshold does exist, it is likely to occur at respirable coal mine dust concentrations below not only the existing standard, but also the final standard, assuming a 45-year lifetime of occupational exposure. Due to the nonlinear nature of the models, much of the reason for stratifying the exposures by occupation and work location was to account for higher exposures in certain job categories.

Regardless, the mean respirable coal dust concentration for each coal mining occupation in the QRAs for the proposed and final rules is documented in accordance to the MSHA's job coding based on single distinct occupation. Attfield and Morring (1992a) determined that the average tenure

[40] The research cited by the commenter does not apply specifically to respirable coal mine dust exposures.

[41] The 95-percent confidence interval reported for this estimate was 0 to 55 mg-yr/m^3, so the evidence for a threshold was not statistically significant at a 95-percent confidence level.

[42] The average respirable coal mine dust concentration of 0.5 mg/m^3 is calculated by multiplying 22 mg-yr/m^3 by 45 yr occupational life.

worked for the Lainhart job coding scheme was different for each occupation group. Therefore, the occupational category decomposition for respirable coal dust is needed in the QRA, as was done in both QRAs.

e. Model Consistency and Coherence

One commenter also stated that the Attfield-Kuempel exposure-response model for NMRD mortality used in the QRA for the proposed rule exhibited inconsistencies that do not pass basic consistency checks for yielding valid risk predictions. As an example, this commenter cited the Attfield-Kuempel model for NMRD mortality risk, which, even with cumulative exposure set to zero, produces relative risk estimates of 4.4 and 1.2 for miners regionally associated with anthracite and high rank bituminous coal, respectively. The commenter did not describe or enumerate the ''basic consistency checks'' considered necessary for validating risk predictions or identify any other examples of purported inconsistencies in any exposure-response models used in the QRA.

As discussed in Section III.B.2.c. of this preamble, the commenters did not recognize that the model does not attribute a relative risk of 4.4 to coal in the absence of any exposure. Instead, as explained in the QRA for the proposed rule, Appendix K, the model estimates a relative risk of 4.4 ''for miners regionally associated with anthracite . . .'' and ''[t]his suggests that the regional effects are primarily due to geographic factors other than coal rank . . . .'' (QRA, Appendix K, p. 135). The relative risk estimate of 4.4 represents background risk in the Anthracite region, which is not associated by the model with coal. The same background risk is present in both the estimate of risk under current exposure conditions and the reduced risk projected to remain under the final rule. Therefore, background risk associated with the Anthracite region is canceled out when projected risk is subtracted from existing risk to estimate the final rule's impact.

MSHA does not regard the relative risk estimated for exposure in the Anthracite region as an inconsistency. As emphasized above, the Attfield-Kuempel model yields a background relative risk or intercept of 4.4 for occupationally unexposed miners in the Anthracite region. The effect of anthracite exposure is modeled by the slope of the exposure-response curve, rather than its intercept. The model predicts (a) that the background rate of NMRD mortality in the anthracite region is 4.4 times what it is in the West region; and (b) that the slope of the exposure-response relationship is also greater (by a factor of 4.4) for anthracite exposures than for exposures to western coal.[43]

Furthermore, MSHA believes that it is appropriate to attribute improvements in predicted risk (obtained by subtraction within coal mining regions) with reductions in the exposures expected under the final rule. The commenter listed several factors, unrelated to respirable coal mine dust exposure, that could account for the predicted improvements, including model specification errors, unmodeled interactions among variables, omitted covariates and confounders, etc. However, these possibilities do not arise from inconsistencies in the particular exposure-response models used in the QRA. Such factors may contribute to the uncertainty of any epidemiological analysis. The fact that the commenter ''could'' account for the predicted improvements does not contradict MSHA's view that the predicted improvements are rationally attributable to reductions in respirable coal mine dust exposure.

Despite their shortcomings, the exposure-response models used in the QRA comprise the best available means of quantifying risks attributable to respirable coal mine dust exposures. Therefore they satisfy both the requirements of § 101(a)(6)(A) of the Mine Act requiring the Secretary to set health standards ''on the basis of the best available evidence'' and the Office of Management and Budget's (OMB) 2002 data quality guidelines, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (36 FR 8452, February 22, 2002). None of the commenters cited alternative quantitative models that they thought MSHA should use instead.

2. Reliance on Mean and Cumulative Exposures

Some commenters, in accounting for possible threshold effects, objected to the reliance in the QRA for the proposed rule on mean respirable coal mine dust concentrations at work locations and lifetime cumulative respirable coal mine dust exposures. In addition, the commenters disagreed with the QRA's application of exposure-response models to mean exposures within groups of occupationally, geographically, and environmentally related work locations.[44] The commenters explained that there are two related problems with the QRA's exposure metric: (1) Its use of cumulative exposures (ignoring peaks, and the fact that a higher concentration for a shorter time may cause diseases even though the same cumulative exposure spread over more years would not); and (2) its focus on mean exposures, ignoring the variance of exposure and the occurrence of exceptionally high (far above the mean) cumulative exposures.

The commenters' concern about relying on average exposures depends partly on the premise of threshold effects noted in Section III.B.2.d. of this preamble. If this premise were true, then attributing risks to average respirable coal mine dust concentrations and cumulative exposures could both mask threshold effects and assign risks to a broader population than warranted. The existing epidemiological data, however, do not appear to support the premise of significant threshold effects. Furthermore, as mentioned in the QRA, no exposure-response models have been published that would enable MSHA to account for peak respirable coal mine dust exposures when quantifying health risks.

The commenters are also concerned that masking can occur when different exposures are averaged together. MSHA agrees, and the QRA for the proposed rule states this in the justification for stratifying its analysis:

> Applying an exposure-response model to an occupational average exposure level fails to account for risks in more specific environments where the exposure is above the occupational average. (QRA, p. 41.)
>
> . . . Therefore . . . exposure response models for CWP, severe emphysema, and NMRD mortality are applied to dust concentration averages for clusters of work locations whose dust conditions pose similar risks. (QRA, p. 42.)

Work locations with respirable coal mine dust conditions posing similar risks are identified in the QRA not only by occupation, but also by the recurrence of exposure measurements exceeding 1.0 mg/m^3 and 2.0 mg/m^3

[43] At a specified mean respirable coal mine dust exposure concentration, μ mg/m^3, experienced over a 45-year occupational lifetime in the Anthracite region, the slope (i.e., rate of change) of the Attfield-Kuempel exposure-response model for relative risk of NMRD mortality is:

$$45\beta \times \exp(\alpha + 45\beta\mu) = \exp(\alpha) \times 45\beta \times \exp(45\beta\mu)$$

where $\beta = 0.00709$, $\alpha = 1.4844$ for the Anthracite region, and $\alpha = 0$ for the West region. Therefore, for any specified value of μ, the slope for anthracite exposures is exp (1.4844) = 4.4 times the slope for West region exposures. Note that for reasons explained in Section III.B.2.c, MSHA is reducing the Attfield-Kuempel estimate of β by a factor of one-third, from 0.00709 down to 0.0048.

[44] In the present context, ''environmentally related'' refers to work locations in the same overexposure recurrency class as defined in the QRA. ''Geographically related'' refers to work locations assigned to the same coal rank category.

(''recurrency class'') and by the rank of coal at the work location. Accordingly, the QRA's analysis is stratified into 306 cells, shown in the Tables 12 and 20 in the QRA. Although this complicates presentation of the QRA's results, it was done precisely to avoid distorting risk estimates by averaging essentially different exposures. The QRA provides separate analyses for strata ranging between work locations showing average exposure to low rank respirable coal mine dust at 0.11 mg/m^3 and work locations showing average exposure to high rank respirable coal mine dust at 2.94 mg/m^3. (See Table 12 in the QRAs for the proposed and final rules.)

These same commenters stressed the importance of quantifying not just the mean exposure concentration before and after a rule is implemented, but how the frequency distribution of exposures will change. To illustrate, a hypothetical example was provided to show that a rule that decreases mean exposure can increase risk. A key feature of this example was that the rule reduces the mean exposure concentration, through rigorous dust control measures that result in lower exposures for most workers, but in higher exposures for workers in locations where implementation or compliance fail.

The commenters presented no discussion of where, how, or why the proposed rule would cause exposures for any miners to increase, and MSHA sees no reason why failures of implementation or compliance would do so. Furthermore, the projections in the QRA for the proposed rule of respirable coal mine dust concentrations under the proposed and final rules do exactly what the commenter advocates as being important: The frequency distribution of exposures, before and after implementation of the rule, is projected before estimating any risks. The QRA does this by projecting the expected impact of the rule separately onto each of the individual respirable coal mine dust measurements used to characterize the exposure distribution for each work location (See the QRA for the proposed rule, Appendix H(c), p.128). Mean projected exposure concentrations are calculated, for each work location and then for the whole cluster of similar work locations comprising each stratum of the analysis, only after the frequency distribution of respirable coal mine dust concentrations on a shift has been projected.

MSHA did not rely on mean exposures, and as further justification for stratifying its analysis, the QRA for the proposed rule points out that when exposure-response relationships are curved upwards (as in the QRA), ''evaluating risk at the average exposure level will always underestimate average risk.''

The commenters also stated that MSHA's QRA did not quantify relatively high (disease-relevant) exposures, nor model how they would change if the proposed rule is finalized.

As indicated above, the QRA for the proposed rule separately evaluates current and projected risks in 306 different exposure strata, including five in which average exposure exceeds the existing standard (QRA, Table 12). In addition, the QRA for the proposal quantifies the prevalence of individual excursions (QRA, Tables 6 and 9 and Figures 5 and 6) and explicitly projects the impact of reducing these excursions to the final standard (QRA, p. 64 and Footnote 55). MSHA agrees that further research on the effects of excursions would be beneficial, but there have been no studies providing exposure-response models sensitive to measures of exposure excursion frequency and intensity. MSHA believes that by modeling the elimination of all shift exposures above the final standard in its projections of risk under the final rule, the QRA for the final rule has accounted for excursions to the greatest extent possible.

3. Projected Exposures and Risk Reductions

MSHA believes that it is not only important to quantify the mean exposure concentration before and after a final rule is implemented, but also how the frequency distribution of exposures will change. This is why the QRAs for the proposed and final rules address each work location separately in their projections of exposures, estimating the job-specific effect on relatively low exposures separately from the effect on exposures that currently exceed the standard. Some commenters used a very different method of predicting how exposures would have changed under the proposed rule. According to their method, respirable coal mine dust concentrations under the proposed rule would follow the same distributional form as current exposures, but with the mean shifted lower by an amount sufficient enough to force nearly all of the high concentrations down below the proposed standard. To reduce dust concentrations sufficiently while maintaining the same distributional form, a substantially greater reduction in the mean is required than what the QRA for the proposed rule projects.

The QRA for the proposed and final rules formulate projections by reducing current exposures by various amounts, depending where they are relative to the applicable standard, and then calculating the resulting mean for each stratum in the analysis. Since the QRA assumes (conservatively) that respirable coal mine dust concentrations on relatively dusty shifts will be reduced only as far as necessary to achieve compliance, the distribution of projected concentrations generally bears little resemblance to the current distribution of concentrations. It is anticipated that the continuous personal dust monitor will eventually enable mine operators to maximize production while keeping dust concentrations at or below the permissible standard on every shift. The projected change in exposure distributions is schematically illustrated by Figure III–2.

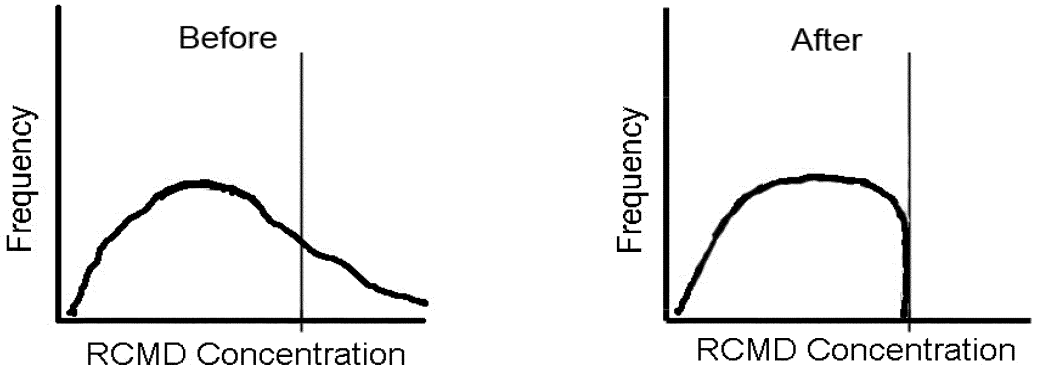

Figure III–2—Schematic diagram of change in distribution of respirable coal mine dust concentrations (RCMD) at an individual work Location as projected by QRA for the proposed rule. Vertical line represents the final respirable coal mine dust concentration standard

In contrast, other commenters' method constructs its projections by computing the mean of a theoretical distribution in which individual respirable coal mine dust concentrations would rarely exceed the final standard. This calculation is based on the premise that in achieving compliance with the final standard on every shift, the distribution of concentrations would compress but retain the same general shape as before. Their method assumes that the shape of the respirable coal mine dust distribution (i.e., the relative variance) remains unchanged. The type of change predicted by the commenters is shown in Figure III–3.

The underlying difference between these two approaches is that the commenters state that MSHA's analysis in the QRA for the proposal of the required respirable coal mine dust reductions needed to meet the proposed respirable coal dust standard is not adequate because it substantially underestimates the necessary reductions. Under the final rule, operators will only need to make reductions on shifts on which the 1.5 mg/m^3 standard is exceeded. Additional reductions may occur and were included in the QRA's projections to the extent suggested by empirical evidence (Table 19 and Appendix H(b) of the QRAs for the proposed and final rules), but neither the proposed and final rules require these reductions. The theoretical model used by the commenters would require larger reductions to satisfy the theoretical constraint of a constant relative variance.

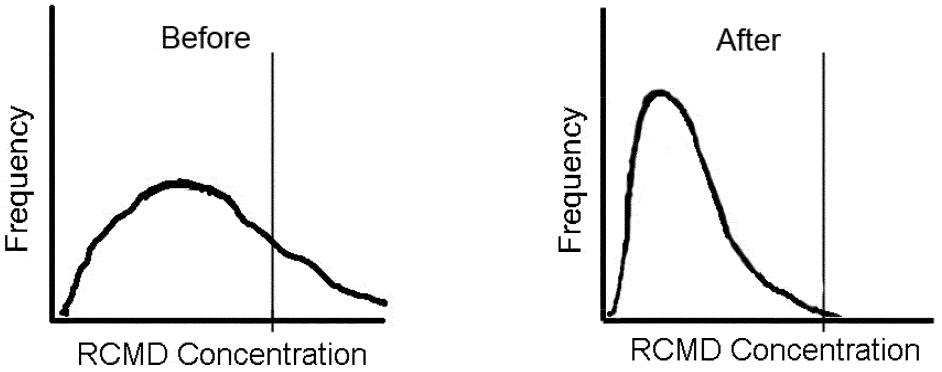

Figure III–3—Schematic diagram of projected change in distribution of respirable coal mine dust (RCMD) concentrations according to the commenters approach. Vertical line represents final respirable coal mine dust concentration standard

These commenters expressed concern about the difficulty of reproducing MSHA's analysis of the inspector sampling data cited in the QRA for the proposed rule (U.S. Department of Labor, MSHA (2010). Quantitative Risk Assessment, Dust Data Files, InspSamp.txt). Before discussing the evidence the commenters present in support of their theoretical model, it is helpful to clarify a source of some confusion. The commenters are correct when they state that a total of 146,917 valid, Day-1 inspector samples [45] were used by MSHA in the QRA, as shown in Tables 1 and 3 of the QRA for the proposal. These commenters noted that this subset of 146,917 was obtained from the total of 181,767 non-voided samples by excluding (a) 14,016 samples collected within 21 days after ''Day 1'' of an MSHA dust inspection, (b) 10,927 Day-1 samples not associated with an occupation, and (c) 9,906 Day-1 intake air samples. One additional sample (d) was excluded ''because the dust concentration measurement appears to have resulted from a coding error.'' These subtotals (a, b, c, and d) are all shown in Appendix B of the QRAs for the proposed and final rules and fully account for the 34,850 valid samples excluded from the analysis

[45] A ''Day-1'' inspector sample is an MSHA inspector sample that was collected more than 21 days after the initial day of a prior MSHA inspection in the same production area of a specified mine.

Samples are deemed to have been obtained in the ''same production area'' of a specified mine when the samples are coded with the same mine ID and the same 2nd and 3rd digits of MSHA's 4-digit entity code. For example, entity codes 0010 and 9011 represent the same production area within a specified mine.

(181,767 − 34,850 = 146,917). The apparent source of confusion was that the summary formula provided at the bottom of page 93 in the QRA for the proposed rule did not include the 9,906 excluded intake air samples.[46] This has been corrected in Appendix B of the QRA for the final rule.

These commenters also were concerned with the QRA's stated reasons for excluding the 2004–2007 inspector samples from its estimates of current and projected exposure levels. After noting the temporal changes in samples per work location shown by Table 5 in the QRA for the proposed rule, and substantial right-skewing of the respirable coal mine dust concentration data, they stated that a downward trend in the average [respirable coal mine dust] level per work location is expected due to increasing sampling error associated with decreasing sample size for the right-skewed data, absent any real change in respirable coal mine dust distributions over that period.[47] Furthermore, the commenters expressed concern with MSHA's finding of a downward trend in inspectors' measurements because their assessment of a temporal trend by job category in the MSHA inspector Day-1 sample data shows no meaningful temporal trend in any category or for the aggregated data. According to the commenters, some trends reached nominal statistical significance, but they explained virtually zero percent of the variance of the natural-log-transformed respirable coal mine dust data.

For both underground and surface measurements, MSHA's analyses (summarized in Appendix D(c), Tables 39 and 41, in both QRAs for the proposed and final rules) show a statistically significant downward time-trend in respirable coal mine dust concentrations obtained from inspector samples, at confidence levels exceeding 99.9 percent. Unlike the non-peer reviewed analysis submitted by these commenters, MSHA's peer-reviewed analyses account for specific mines, specific work locations within mines, and applicable standards. Although, in MSHA's analysis, the percentage of variance explained by the time-trend (represented by ''sampling date'' in the ANCOVA tables) is small compared to that explained by occupational differences, it is larger than the amount explained by mine-to-mine differences or differences between production areas within the same mine, and even the applicable standard. It may be that in the commenters' analysis, temporal effects were partially masked by aggregating across work locations and ignoring differences and/or changes in the applicable standard in effect at specific work locations. As mentioned on page 102 of the QRA for the proposed rule, the ANCOVA method used adjusts for variability in the number of samples obtained in each year at each location. Furthermore, lack of statistical symmetry in the data (and associated heterogeneity of sampling errors) is addressed by application of the maximum-likelihood Box-Cox transformation[48] (Box and Cox, (1964)). The commenters' objections to MSHA's analyses are not supported by the available data.

These commenters performed an analysis of the Log-transformed inspector data and reported that when each Mine ID and work location-specific set of untransformed data was normalized (divided) by its corresponding applicable dust standard, the resulting log-transformed data sets aggregated by job category were, in each, either approximately normally distributed (for 9 of 33 job categories), or otherwise approximately distributed as a mixture of two normal distributions for the remaining job categories.

From this analysis, the commenters concluded that mixed lognormal distributions provided a more accurate and simpler basis for performing statistical analysis with the coal mine dust data set. However, they presented no evidence that the logarithmic transformations they used were ''more accurate'' than the Box-Cox transformations used by MSHA in the QRA for the proposed rule (which include the logarithmic transformation as a special case). It is simpler to analyze the data (and explain results) when all mines and work locations within mines are combined into an undifferentiated pool. However, the finding in the QRA for the proposed rule[49] that ''. . . work locations exhibit a wide variety of distributional forms . . . that cannot adequately be approximated by a lognormal model'' did not refer to the combined data. These commenters presented no evidence suggesting that it was more accurate to combine data from all work locations associated with the same occupation than to differentiate among work locations at different mines or mine areas. Tables 39 and 41 of the QRA for the proposal show that these differences are statistically significant, so not including them would not yield more accurate results.

Approximate log-normality across work locations was never questioned or disputed in the QRA for the proposed rule. For purposes of estimating the impact of the final rule on expected risk, the important questions are whether the distributions should be assumed lognormal within work locations and, far more important, whether they would retain, within work locations, the same coefficient of variation and distributional form under the final rule regardless of their distribution. MSHA expects the final rule to have its greatest impact on work locations currently exhibiting the highest dust concentrations, with relatively little impact on work locations already in compliance with the final standard on every shift.

According to the commenters, full compliance with the rule as proposed would have required a 92% reduction in the mean respirable coal mine dust concentration for longwall tailgate operators, from 1.39 mg/m^3 (their estimate of the current mean) to 0.11 mg/m^3 (their estimate of the mean level required to meet the proposed 1.0 mg/

[46] These commenters also requested clarification of the 4-digit entity code provided in the sampling data files. Leading zeros and blanks should be treated as equivalent when interpreting the first two characters. As stated in Footnote 12 on pages 5 and 14 respectively of the QRAs for the proposed and final rules, samples collected at the same work location within a mine or processing facility are identified by sharing the same 2nd and 3rd characters of the entity code, along with the same mine ID and job classification code.

[47] These commenters also questioned MSHA's use of a study predating the 2004–2008 data, and of miners' anecdotal evidence, to justify the assumption of downward bias in MSHA's respirable coal mine dust measurements. MSHA acknowledges that it is inherently difficult, if not impossible, to fully quantify bias due to selective reductions of dust levels in the presence of an MSHA inspector. However, MSHA finds the anecdotal evidence for such bias, confirmed over many years of miners' testimony at public hearings, to be persuasive. The 1993 study represented an attempt to quantify some part of this bias, and no similar study of later sampling data is available. It was cited in the QRA for the proposed rule, along with the anecdotal evidence, only to support MSHA's assessment that such bias exists. Neither it, nor the anecdotal evidence, was used in any attempt to quantify the extent of the bias (U.S. Dept. of Labor, MSHA, 1993, Report of the Statistical Task Team of the Coal Mine Respirable Dust Task Group).

[48] This enables valid analysis of data exhibiting a much wider array of error structures than what these commenters assume, and permits the logarithmic transformation (appropriate when standard deviation is proportional to the mean concentration measurement) as a special case. In the analysis of surface data (QRA for the proposal, Table 41), the transformation (Box-Cox λ=0) is identical to the logarithmic transformation favored by these commenters. In the analysis of underground data (QRA, Table 39), the transformation (Box-Cox λ=0.1) is close to logarithmic but reflective of data that is slightly less skewed than the Lognormal assumption would predict.

[49] Appendix G(b), p. 125.

m^3 standard with a 99% compliance rate). This calculation relies on the following unfounded assumptions that MSHA responds to below.

(i) That variability in dust concentrations for a specified occupation, pooled across all mines and mine sections, is similar to the variability at the individual work locations where exposure occurs and the final standard would actually be implemented.

The values of σ_1 and σ_2 shown in the commenter's calculations represent the pooled variability in respirable coal mine dust concentrations across all work locations for each occupation. Thus, the measure of variability these commenters use in their analysis combines (1) the average variability observed within work locations and (2) the variability in the mean levels observed between work locations of the same occupational type. This inflates the estimates of variability within work locations—where the mandated reductions would actually have to occur. Furthermore, individual work locations may have widely differing degrees of variability in respirable coal mine dust concentrations. Therefore, pooled estimates of variability within work locations (even if properly calculated so as to eliminate the effects of variability between work locations) could merely be averages of significantly divergent exposure patterns at individual work locations. The calculations that the commenters present in their comments apply only to work locations where variability in respirable coal mine dust concentrations is approximately equal to variability observed across the entire population of work locations associated with longwall tailgate operators.

(ii) That within occupational categories, the shift-to-shift dust concentration at each work location is lognormally distributed.

Although the assumption of universally lognormal exposure distributions is widespread and perhaps entrenched in the occupational hygiene literature, it is not always supported by coal mine dust concentration measurements at individual work locations. (See Appendix G(b), QRA for the proposed rule.) Multimodal, or even unimodal right-skewed distributions, are not necessarily well-approximated by a lognormal model. Although these commenters correctly suggest that multimodal distributions can often be adequately represented as mixtures of lognormal distributions, they present no evidence that such distributions provide good, predictive models for the distribution of respirable coal mine dust concentrations within work locations. The fact that pooled exposures are lognormally distributed does not imply that exposures at individual work locations are lognormally distributed.

(iii) That the distributional form (i.e., shape) of each occupational exposure distribution, as represented by the lognormal parameters shown in their comments, would not change after successful implementation of the final rule.

As illustrated by Figure III–3, it is this assumption of shape-retention that is primarily responsible for the extreme reductions in mean exposure that these commenters conclude are necessary for compliance with the proposed rule. The commenters did not present empirical evidence directly supporting this assumption, but they did offer the following justification after MSHA questioned the assumption at a public hearing: (1) Empirical evidence for each job category was shown to be consistent with contributing log-normal components; (2) evidence was based on an analysis of dust concentration measurements that had already been ''normalized'' as a result of dividing them by compliance level specific to each job location and job category; and (3) the underlying pre-normalized data aggregated across each job category also exhibit mixed log-normal distributions. According to the commenters, this demonstrates that compliance resulted in job-specific multiplicative shifts of the type assumed in their subsequent analysis. They also argued that if more complex types of shifts had arisen due to compliance, such as those projected in the QRA, then the pre-normalized data would not be expected to exhibit the degree of consistency with mixed log-normal distributions that is summarized in the comments.

Although all three of the commenters' premises summarized above are true, they do not support the commenters' conclusion that the effect of applying job-type-specific control measures to comply with new regulations will be to induce a leftward (downward) multiplicative shift in the mixed log-normal distribution that the commenters estimated to be consistent with empirical data for that job category. Furthermore, the commenters' three premises apply only to the distributions of respirable coal mine dust concentration measurements aggregated across all work locations of a given occupational type. Their analysis models a static distribution for each occupational aggregate and does not address the response to compliance with more stringent standards. Despite the ''normalization'' procedure described, the commenters' analysis provides no information on how individual work locations have responded to reductions in their exposure limits. For most work locations, the applicable standard did not even change appreciably during the data period. The fact that these aggregated distributions are consistent with mixed lognormal assumptions demonstrates nothing about how individual work locations will respond to the reduced standard.

4. Uncertainty Analysis

As indicated above, a difference in assumptions as to how respirable dust exposures would have changed under the proposed rule led some commenters to project exposures for longwall tailgate operators that are quantifiably different from those projected by MSHA. Although MSHA believes that Figure III–2 provides a much better picture than Figure III–3 of how dust concentrations in individual work locations will change under either the proposed or final rule, MSHA fully acknowledges that its predictions of future exposure distributions are not certain. This uncertainty was expressed in the QRA for the proposal by a statement of the major assumptions involved in MSHA's projections (QRA, p. 80). However, MSHA has no empirical data basis for quantifying the degree of uncertainty attached to these assumptions. This illustrates a more general point: Although it may be possible to quantify and compare the results of competing models, it may not be possible (in the absence of appropriate experimental data) to provide a valid quantitative assessment of uncertainty in regard to competing assumptions.

Several commenters stated that the QRA for the proposal lacked sufficient discussion of the uncertainty surrounding its estimates of current and projected exposures and health risks, and of the reductions in risk expected to result from implementation of the proposed rule.

Although the QRA for the proposed rule contained qualitative discussions of its major assumptions and their implications with respect to both current and projected risks (pp. 58–59 and p. 80, respectively), it did not present much quantitative information on statistical uncertainties related to the estimates it used. In part, this was because such quantification often overlooks far greater and more important uncertainties in the underlying assumptions. Nevertheless, in response to comments, the QRA for the final rule provides additional information on uncertainty of the estimates wherever possible. In

addition, the QRA for the final rule contains a comprehensive uncertainty analysis for MSHA's estimates of current and projected exposures (QRA for the final rule, Section 4).

MSHA agrees with some commenters that a purely quantitative approach has the potential to underestimate uncertainty due to its lack of incorporation of model uncertainty. Therefore, although MSHA believes that the QRAs for the proposed and final rules have employed the best available models for estimating existing and future health risks, MSHA's presentation of quantitative uncertainty measures should be tempered by the realization that such measures depend heavily on acceptance of the underlying assumptions of the models used in the both QRAs.

One commenter stated that the two mortality studies cited in the QRA for the proposal (Miller et al., 2007; and Attfield and Kuempel, 2008, Figure 15) yield what appear to be quite different estimates of relative risk for COPD mortality attributable to respirable coal mine dust exposure. However, the commenter did not mention the main point of the QRA's discussion of the difference between these estimates on page 40: ''. . . even the lower estimate shows a significant increase in COPD mortality attributable to the dust exposure.'' More importantly, the difference in relative risk reported from the two studies (Miller et al., 2007; Attfield and Kuempel, 2008) is not statistically significant. Table III–8 contains 90-percent confidence intervals for the relative risks at mean concentrations of 1.0, 1.5, and 2.0 mg/m^3. The lack of any statistically significant difference is shown by the extensive overlap between corresponding intervals. Therefore, contrary to the commenter's suggestion, the difference in estimated relative risks may well reflect normal sampling variability rather than a fundamental disagreement between models.

In addition, Table III–8 presents 90-percent confidence intervals for relative risks of COPD mortality based on MSHA's revision of the Attfield-Kuempel estimate, which is intended to mitigate bias due to underestimation of exposure, as explained in the last paragraph of Section III.B.2.c.[50]

TABLE III–8—90-PERCENT CONFIDENCE INTERVALS FOR RELATIVE RISK (RR) OF COPD MORTALITY ATTRIBUTABLE TO RESPIRABLE COAL MINE DUST EXPOSURE AVERAGED OVER 45-YEAR OCCUPATIONAL LIFETIME, ACCORDING TO THREE DIFFERENT EXPOSURE-RESPONSE MODELS

Mean respirable coal mine dust conc. mg/m^3	Miller et al. (2007) model COPD/17	Attfield/ Kuempel (2008)	Attfield/ Kuempel revised by MSHA
1.0	1.10–1.20	1.12–1.61	1.13–1.36
1.5	1.16–1.31	1.18–2.03	1.20–1.58
2.0	1.22–1.43	1.25–2.58	1.28–1.84

The commenter also suggested that mortality data obtained after implementation of the Mine Act contradict predictions from the exposure-response models on which the QRA relies. Citing Bang et al. (1999) and Mazurek et al. (2009), the commenter stated that mean respirable coal mine dust concentrations have been reduced in the past, yet health risks have increased in some age categories. According to the commenter, this conflicts with the predictions of the QRA's risk modeling, and shows that the model predictions are not certain, and may be incorrect. For reasons explained below, MSHA believes the commenter misinterpreted the results of both studies. Bang et al. (1999) computed annual age-specific mortality rates for three age groups (15–44, 45–64, and 65 or older), and for the aggregate, among decedents for whom CWP, asbestosis, or silicosis was identified as either an underlying or contributing cause of death. The overall age-adjusted CWP-related mortality rate declined steadily over the 1985–1996 study period, ''from 8.32 per million in 1985 to 3.20 per million in 1996.'' CWP-related mortality rates also declined significantly within the 45–64 and ≥ 65 age groups, but not in the 15–44 age group. The authors concluded that ''the reduction of CWP mortality could be related to enforcement of and compliance with dust-control measures adopted in 1969.'' With respect to the lack of a statistically significant downward trend in the 15–44 age group, the authors noted not only that ''this observation may have resulted in part from lack of power due to smaller annual numbers of deaths at younger ages;'' but also that—

The continued occurrence of pneumoconiosis deaths in young adults may reflect recent overexposures. High levels of exposure are associated with much shorter latency and more rapid disease progression, resulting in early death [Bang et al., 1999].

Mazurek et al. (2009) examined annual CWP mortality rates and years of potential life lost (YPLL),[51] based on 28,912 decedents from 1968 through 2006 for whom CWP was identified as the underlying cause of death. The overall finding was that:

> . . . CWP deaths among U.S. residents aged ≥25 years declined 73%, from an average of 1,106.2 per year during 1968–1972 to 300.0 per year during 2002–2006. . . . Age-adjusted death rates among residents aged 25–64 declined 96%, from 1.78 per million in 1968 to 0.07 in 2006; age-adjusted death rates among residents aged ≥65 years declined 84%, from 6.24 per million in 1968 to 1.02 in 2006 . . . [Mazurek et al., 2009].

[50] As in the case of NMRD mortality risk discussed earlier, the revised estimate of the coefficient of cumulative respirable coal mine dust exposure for estimating COPD Relative Risk lies halfway between the Attfield-Kuempel estimate of 0.00648 and the Miller COPD/17 estimate of 1.92 × 0.0016 = 0.00307 (i.e., (0.00648 + 0.00307)/2 = 0.00478). Therefore, relative risk (RR) in the revised model is given by: $RR = \exp(0.00478 \times 45 \times \mu)$, where μ is the mean respirable coal mine dust concentration experienced over a 45-year occupational lifetime. Standard errors for the revised coefficient were obtained by applying the standard propagation of errors formula for the average of two independent random variables (i.e., the 1.92-adjusted Miller and the Attfield-Kuempel estimates of the coefficient).

[51] The term ''years of potential life lost (also known as ''potential years of life lost'') is a measure of the relative impact of various diseases and lethal forces on society (see Last, John M., ed. 2001. *A Dictionary of Epidemiology,* Fourth Edition. New York: Oxford University Press, Inc.).

YPLL is computed by estimating the years that people would have lived if they had not died prematurely due to disease or other causes. YPLL is an important measure of premature mortality. YPLL is equal to the numerical difference between a predetermined endpoint age (i.e., 75, 85, etc.) and the age at death for a death or deaths that occurred prior to that endpoint age. In addition, the YPLL Rate is equal to the (Number of YPLLs divided by the population under endpoint age) × 100,000.

Annual CWP-attributable YPLL before age 65 years was also reported to have declined, ''from a high of nearly 1,800 in 1970 to a low of 66 in 2001.'' However, YPLL before age 65 years was found to have been increasing between 2002 and 2006. Unlike the commenter, the authors did not associate the observed increase in YPLL from 2002 and 2006 with any supposed decrease in exposures over that time period. Instead, the authors noted that the

> . . . annual CWP-attributable YPLL before age 65 years also have decreased, from a high of nearly 1,800 in 1970 to a low of 66 in 2001. However, the findings in this report indicate that YPLL before age 65 years have been increasing since 2002. This is consistent with the observed increase in the percentage of underground coal miners identified with CWP, in particular among younger workers.

The report did not examine historical changes in the age-composition of the mining population or analyze the effects that the changes would have on historical changes in YPLL. However, contrary to the commenter's implicit assumption of a progressive decline in exposures in the latter years of the study period, Mazurek et al. did pose the following possible explanations for the observed increase in YPLL:

> One cause of the increased YPLL in recent years might be greater exposure of workers to coal dust . . . Increased coal production per shift can make dust suppression more difficult. . . . Larger, more powerful machines generate larger quantities of dust in shorter periods, potentially exposing workers to higher concentrations of dust. . . In addition, the total number of hours worked in underground coal mines increased 25.6%, from an annual average of 1,671 per miner during 1978–1982 to 2,099 per miner during 2003–2007. Increased hours of work can result in increased inhaled dust, which might exceed the lungs' ability to remove dust. . . Finally, another cause of increased CWP-attributable YPLL could be missed opportunities by miners for early disease screening, which could exacerbate disease progression. [Mazurek et al., 2009].

None of these potential explanations invokes any decrease in mean cumulative exposure to explain the relatively recent increase in YPLL. Neither the results reported in Mazurek et al. (2009) nor the possible explanatory factors it discusses conflict in any way with ''the predictions of the QRA's risk modeling'' or show ''that the model predictions . . . may be incorrect.''

Some measure of the uncertainty implicit in the estimates of exposure under current conditions in the QRA for the proposed and final rules is given by QRA Figures 7, 8, and 9, along with the discussion of underlying assumptions in the Section 2 of the QRA for the final rule. In conjunction with new projections of exposures and residual excess risks under a 1.5 mg/m³ respirable coal mine dust concentration final standard, Section 4b of the QRA for the final rule discusses uncertainty in the exposures expected under the final standard and enforcement policies. In the remainder of this section, MSHA addresses uncertainty in the exposure-response models used in the QRAs for the proposed and final rules. Confidence bands graphically representing this source of uncertainty are provided in Section 4c of the QRA for the final rule.

a. CWP, Including PMF

Table 65 (in Appendix I) in the QRA for the final rule (Table 53 in the QRA for the proposed rule) provides the standard errors of all estimated coefficients used in the exposure-response models for CWP1+, CWP2+ and PMF. Nevertheless, some commenters objected to the absence of confidence bands in the graphic displays of these models (Figures 10 and 11 of both QRAs). In response to these commenters, 90-percent confidence intervals for the estimated excess risks attributable to respirable coal mine dust are shown for 73-year-old miners at three different exposure levels in Tables III–9 and III–10. Table III–9 pertains to geographic regions associated with low/medium rank coal and Table III–10 pertains to geographic regions with high rank coal. Assuming, as MSHA does, that the Attfield-Seixas models are reasonably accurate, there is a chance of approximately 1 in 20 that 45 years of occupational exposure at the specified level would result in fewer adverse outcomes, per thousand, than the left interval endpoint. Similarly, the chance is approximately another one in twenty that exposure at the specified level would result in adverse outcomes at a rate exceeding the upper confidence limit. For example, according to the Attfield-Seixas model, the likelihood is approximately 95 percent that 45 years of occupational exposure to high rank respirable coal mine dust at an average concentration of 1.5 mg/m³ would result in more than 53 excess cases of PMF per 1,000 miners at age 73 years.

TABLE III–9—MAXIMUM LIKELIHOOD ESTIMATES AND 90-PERCENT CONFIDENCE INTERVALS FOR EXCESS RISK OF CWP ATTRIBUTABLE TO RESPIRABLE COAL MINE DUST EXPOSURE, BASED ON ATTFIELD-SEIXAS MODEL FOR 73-YEAR-OLD MINERS AFTER 45-YEARS OF OCCUPATIONAL EXPOSURE AT LOW TO MEDIUM RANK COAL MINES

Mean respirable coal mine dust conc. mg/m³	Excess cases per thousand exposed miners					
	CWP 1+		CWP 2+		PMF	
1.0	98.3	73.0–125.6	57.5	29.7–92.3	20.0	5.7–63.3
1.5	163.5	119.4–211.7	100.8	48.9–170.7	50.2	8.8–121.2
2.0	238.2	172.2–309.5	156.0	71.6–273.0	77.0	12.1–203.0

TABLE III–10—MAXIMUM LIKELIHOOD ESTIMATES AND 90-PERCENT CONFIDENCE INTERVALS FOR EXCESS RISK OF CWP ATTRIBUTABLE TO RESPIRABLE COAL MINE DUST EXPOSURE, BASED ON ATTFIELD-SEIXAS MODEL FOR 73-YEAR-OLD MINERS AFTER 45-YEARS OF OCCUPATIONAL EXPOSURE AT HIGH RANK COAL MINES

Mean respirable coal mine dust conc. mg/m³	Excess cases per thousand exposed miners					
	CWP 1+		CWP 2+		PMF	
1.0	177.7	118.2–244.4	141.0	69.8–237.6	96.8	30.6–208.9
1.5	303.1	198.6–413.7	271.4	125.0–459.1	196.9	53.2–444.9
2.0	437.3	290.3–572.9	433.6	196.5–672.7	338.6	82.2–688.2

b. Severe Emphysema

Standard errors for all estimated coefficients in the Kuempel pulmonary impairment model are shown in Table 66 of Appendix J in the QRA for the final rule (Table 54 in the QRA for the proposed rule). Table III–11 below provides 90-percent confidence intervals for estimated excess risks of severe emphysema attributed by the model to respirable coal mine dust exposures at 45-year occupational lifetime average concentrations of 1.0, 1.5, and 2.0 mg/m³. As in Tables 16, 24, and 28 of both QRAs, these risks apply to never-smoking miners at age 73. According to this model, the likelihood is approximately 95 percent, for example, that white miners exposed to respirable coal mine dust at an average concentration of 1.5 mg/m³ will, at age 73 years, experience severe emphysema at a rate exceeding 49 cases per thousand exposed miners. Similarly, the likelihood is approximately 95 percent that this rate will be less than 156 cases per thousand.

TABLE III–11—MAXIMUM LIKELIHOOD ESTIMATES AND 90-PERCENT CONFIDENCE INTERVALS FOR EXCESS RISK OF SEVERE EMPHYSEMA ATTRIBUTABLE TO RESPIRABLE COAL MINE DUST EXPOSURE, BASED ON KUEMPEL PULMONARY IMPAIRMENT MODEL FOR 73-YEAR-OLD NEVER-SMOKING MINERS AFTER 45-YEARS OF OCCUPATIONAL EXPOSURE

Mean respirable coal mine dust conc. mg/m³	Excess cases of severe emphysema per thousand exposed miners			
	Racially "white" miners		Racially "non-white" miners	
1.0	61.0	31.6–94.3	94.3	50.3–141.0
1.5	98.7	49.6–156.3	147.0	77.5–220.7
2.0	141.2	69.0–227.4	202.1	105.8–301.7

c. Mortality Due to NMRD

Attfield and Kuempel (2008) did not provide standard errors or other measures of uncertainty for the model of NMRD mortality risk presented in their Table X (reproduced in Appendix K of the QRAs as Table 67 for the final rule and Table 55 for the proposed rule). However, in a communication from Dr. Attfield (U.S. Department of Labor, MSHA, Memorandum for the Record: Email from Michael Attfield, 2011), MSHA has obtained standard errors for the estimated coefficients pertaining to cumulative respirable coal mine dust exposure and geographical coal mining region. These are presented in Table III–12 below.

TABLE III–12—STANDARD ERRORS OF ESTIMATED COEFFICIENTS RELATED TO RESPIRABLE COAL MINE DUST EXPOSURE IN ATTFIELD-KUEMPEL NMRD MORTALITY MODEL

Variable	Standard error of estimated coefficient
Anthracite	0.16557
East Appalachia	0.18853
West Appalachia	0.16335
Midwest	0.21121
Cumulative respirable coal mine dust Exposure (mg-yr/m³)	0.00128

Miller et al. (2007) presented estimates and standard errors for the coefficients specified in 18 candidate models of NMRD mortality risk associated with respirable coal mine dust exposures in the United Kingdom (Miller et al., 2007, Table 5.12). In the model that best fits the data (NMRD/17), the estimated coefficient of cumulative exposure and its standard error were 0.0014 and 0.0001997, respectively, for respirable coal mine dust exposures expressed in units of mg-hr/m³. For exposures expressed in units of mg-yr/m³, the corresponding values are 0.0027 and 0.000383, assuming, as in the QRA, an average work-year of 1,920 hours.

Because of bias in the Attfield-Kuempel estimates due to underestimation of respirable coal mine dust exposure for the study cohort, as explained in the last paragraph of Section III.B.2.c. above, MSHA is using a model of NMRD mortality risk in which the Attfield-Kuempel coefficient of respirable coal mine dust exposure has been reduced by averaging it with the coefficient estimated from the NMRD/17 model. The modified coefficient is (0.00709 + 0.0027)/2 = 0.0049, with a standard error of

$$\sqrt{\frac{(0.00128)^2 + (0.000383)^2}{4}} = 0.000668$$

Table III–13 contains maximum likelihood estimates and 90-percent confidence intervals for the relative risk of NMRD mortality attributable to respirable coal mine dust exposure according to the Attfield-Kuempel model, the Miller NMRD/17 model, and MSHA's modified version of the Attfield-Kuempel model. All the risks shown in Table III–13 are relative to unexposed workers with identical smoking histories in the same coal mining region. A relative risk of 1.0 would indicate no expected effect of exposure, and values deviating from 1.0 describe predicted multiplicative effects.[52] For example, according to the modified Attfield-Kuempel model (refer to Table III–13, last column, below), 45 years of occupational exposure at an average respirable coal mine dust concentration of 1.5 mg/m³ increases the risk of NMRD mortality by an

[52] Relative Risk Interpretation: The relative risk is the risk of the exposed group compared to risk of a control group (unexposed workers with identical smoking histories in the same coal mining region). If the relative risk is equal to one, then the risk of developing disease for the exposed group is the same as the risk for the comparison group. This would indicate no association between exposure and the risk of disease. If the relative risk is greater than one, there is a strong positive association (risk of disease increases with increased exposure); whereas if the relative risk is less than one, there is a strong negative association (risk of disease decreases with increased exposure). If the confidence interval (CI) for relative risk contains the number one, this implies lack of statistically significant evidence for an association.

amount probably between 29 and 50 percent—with a 5-percent chance that the increase is less than 29 percent and a 5-percent chance that the increase is greater than 50 percent.

Table III–14 translates the relative risks shown in Table III–13 into excess risks (expected cases per thousand exposed miners) attributable to respirable coal mine dust exposure. As explained in Appendix K of the QRA for the final rule, this translation was based on a competing risk life-table analysis.[53] As before, these excess risks should be interpreted relative to unexposed workers with identical smoking histories in the same coal mining region. For miners exposed for 45 years to respirable coal mine dust at an average concentration of 1.5 mg/m^3, the modified Attfield-Kuempel model (see Table III–14, last column) predicts between 6.4 and 11.0 excess cases of NMRD mortality by age 73, per thousand exposed miners. By definition of the 90-percent confidence interval, there is (again according to the modified Attfield-Kuempel model) approximately a 5-percent chance that the excess NMRD mortality rate would be below 6.4 cases per thousand, and another 5-percent chance that it would be above 11.0 cases per thousand, for miners exposed at this level.[54]

TABLE III–13—MAXIMUM LIKELIHOOD ESTIMATES AND 90-PERCENT CONFIDENCE INTERVALS FOR RELATIVE RISK (RR) OF NMRD MORTALITY ATTRIBUTABLE TO RESPIRABLE COAL MINE DUST EXPOSURE AVERAGED OVER 45-YEAR OCCUPATIONAL LIFETIME, ACCORDING TO THREE ALTERNATIVE EXPOSURE-RESPONSE MODELS

Mean respirable coal mine dust conc. mg/m^3	Relative risk of NMRD mortality					
	Attfield/Kuempel (2008)		Miller et al. (2007) NMRD/17		Attfield/Kuempel modified by MSHA	
1.0	1.38	1.25–1.51	1.13	1.10–1.16	1.25	1.19–1.31
1.5	1.61	1.40–1.86	1.20	1.15–1.25	1.39	1.29–1.50
2.0	1.89	1.57–2.29	1.27	1.20–1.35	1.55	1.41–1.71

TABLE III–14—MAXIMUM LIKELIHOOD ESTIMATES AND 90-PERCENT CONFIDENCE INTERVALS FOR EXCESS RISK OF NMRD MORTALITY ATTRIBUTABLE TO RESPIRABLE COAL MINE DUST EXPOSURE AVERAGED OVER 45-YEAR OCCUPATIONAL LIFETIME, ACCORDING TO THREE ALTERNATIVE EXPOSURE-RESPONSE MODELS

Mean respirable coal mine dust conc. mg/m^3	Excess cases of NMRD mortality by age 73 years, per thousand exposed miners					
	Attfield/Kuempel (2008)		Miller et al. (2007) NMRD/17		Attfield/Kuempel modified by MSHA	
1.0	8.5	5.5–11.6	2.9	2.2–3.5	5.5	4.2–7.2
1.5	13.3	8.8–19.2	4.4	3.4–5.5	8.9	6.4–11.0
2.0	19.4	13.0–28.3	5.9	4.4–7.9	12.0	9.4–15.9

C. Feasibility

1. Pertinent Legal Requirements

Section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(a)(6)(A), requires the Secretary of Labor, in setting health standards, to consider the feasibility of the standards. Section 101(a)(6)(A) of the Mine Act states that the Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under the Mine Act, shall set standards to assure, based on the best available evidence, that no miner suffer material impairment of health from exposure to toxic materials or harmful physical agents over his working life. (30 U.S.C. 811(a)(6)(A)). In developing these standards, the Mine Act requires the Secretary to consider the latest available scientific data, the feasibility of the standards, and experience gained under other laws. Id.

Thus, the Mine Act requires that the Secretary, in promulgating a standard, based on the best available evidence, attain the highest degree of health and safety protection for the miner with feasibility a consideration.

In relation to feasibility, the legislative history of the Mine Act contemplates technology-forcing standards and standards that may include some financial impact. The legislative history states that:

* * * While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeals have recognized, occupational safety and health statutes should be viewed as ''technology forcing'', and a proposed health standard should not be rejected as infeasible ''when the necessary technology looms on today's *horizon.'' AFL–CIO* v. *Brennan,* 530 F.2d 109 (3d Cir. 1975); *Society of Plastics Industry* v. *OSHA,* 509 F.2d 1301 (2d Cir. 1975), cert. denied, 427 U.S. 992 (1975). * * *

Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of section 102(a)(5)(A), the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. The committee concurs with the judicial

[53] To obtain the values in Table III–14, relative risks calculated in the QRA for 162 different clusters of work locations were paired with the corresponding life-table determination of excess risk of NMRD mortality. These 162 pairs were then arranged in order of increasing relative risk, thereby forming a look-up table. Each relative risk in Table III–13 was then assigned an excess risk corresponding to that in the matched pair of the look-up table. Intermediate values were calculated using linear interpolation. The 162 matched pairs of relative and excess risks are shown in the corresponding cells of Tables 17 and 68 of the QRA for the final rule.

[54] The 90% confidence interval indicates the range within which there is approximately a 90% probability that the excess NMRD mortality rate lies. In the example, there is a 10% chance that the true excess NMRD mortality rate lies outside of the range of 6.4–11.0. Therefore, there is approximately a 5% chance that the true rate would be below 6.4 cases per thousand and another 5% chance that it would exceed 11.0 cases per thousand.

constitution that standards may be economically feasible even though from the standpoint of employers, they are ''financially burdensome and affect profit margins adversely'' (I.U.D. v Hodgson, 499 F.2d 647 (D.C. Cir. 1974)). Where substantial financial outlays are needed in order to allow industry to reach the permissible limits necessary to protect miners, other regulatory strategies are available to accommodate economic feasibility and health considerations. These strategies could include delaying implementation of certain provisions or requirements of standards in order to allow sufficient time for engineering controls to be put in place or a delay in the effective date of the standard. S. Rep. No. 95–181, at 21–22 (1977), reprinted in 1977 U.S.C.C.A.N. 3421–22.

Courts have interpreted the term ''feasible'' as meaning ''capable of being done, executed, or effected,'' both technologically and economically. See *Kennecott Greens Creek Mining Co.* v. *MSHA and Secretary of Labor,* 476 F.3d 946, 957 (D.C. Cir. 2007) (citing *American Textile Mfrs. Inst.* v. *Secretary of Labor (OSHA Cotton Dust),* 452 U.S. 490, 508–09 (1981)). In order for an agency's rules to be deemed feasible, the agency must establish ''a reasonable possibility that the typical firm will be able to develop and install engineering and work practice controls that can meet the [permissible exposure limit] in most of its operations.'' *Kennecott Greens Creek,* 476 F.3d at 957 (quoting *American Iron & Steel Inst.* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991)).

In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required. The ''arbitrary and capricious test'' is usually applied to judicial review of rules issued in accordance with the Administrative Procedure Act. See *American Mining Congress* v. *Secretary of Labor,* 671 F.2d 1251, 1254–55 (10th Cir. 1982) (applying the arbitrary and capricious standard of review to MSHA rulemaking challenges). The legislative history of the Mine Act further indicates that Congress explicitly intended that the ''arbitrary and capricious test'' be applied to judicial review of mandatory MSHA standards. ''This test would require the reviewing court to scrutinize the Secretary's action to determine whether it was rational in light of the evidence before him and reasonably related to the law's purposes.'' S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977). In achieving the Congressional intent of feasibility under the Mine Act, MSHA may also consider reasonable time periods of implementation. *Id.* at 21.

Feasibility determinations involve complex judgments about science and technology. Therefore, in analyzing feasibility, an agency is not required to provide detailed solutions to every problem. Rather, it is sufficient that the agency provides ''plausible reasons for its belief that the industry will be able to solve those problems in the time remaining.'' *Kennecott Greens Creek,* 476 F.3d at 957 (quoting *National Petrochemical & Refiners Ass'n* v. *EPA,* 287 F.3d 1130, 1136 (D.C. Cir. 2002)). MSHA's feasibility determinations in this rulemaking are buttressed by its statistical findings that many mines are already in compliance with the requirements of the final rule. *See Kennecott Greens Creek,* 476 F.3d at 959; *American Iron & Steel Institute* v. *OSHA (AISI–II),* 939 F.2d 975, 980 (D.C. Cir. 1991). The fact that ''a few isolated operations within an industry will not be able to comply with the standard does not undermine a showing that the standard is generally feasible.'' 476 F.3d at 957 (quoting AISI–II, 939 F.2d at 980).

Finally, MSHA has authority to promulgate technology-forcing rules. When a statute is technology-forcing, the agency ''can impose a standard which only the most technologically advanced plants in an industry have been able to achieve-even if only in some of their operations some of the time.'' *Kennecott Greens Creek,* 476 F.3d at 957 (citing *United Steelworkers of America* v. *Secretary of Labor,* 647 F.2d 1189, 1264 (D.C. Cir. 1980) and quoting *AISI* v. *OSHA,* 577 F.2d 825, 832–35 (3d Cir. 1978)).

Economic feasibility presents different issues from that of technological feasibility. In the OSHA Cotton Dust case, the Supreme Court stated that a standard would not be considered economically feasible if an entire industry's competitive structure was threatened. According to the Court, the appropriate inquiry into a standard's economic feasibility is whether the standard is capable of being achieved. 452 U.S. at 508–509. To establish economic feasibility, MSHA is not required to produce hard and precise estimates of cost. Rather, MSHA must provide a reasonable assessment of the likely range of costs of its standard, and the likely effects of those costs on the industry. See *United Steelworkers of America* v. *Secretary of Labor,* 647 F.2d at 1264. The courts have further observed that granting companies reasonable time to comply with new exposure limits may enhance economic feasibility. *Id.* at 1264.

MSHA evaluated the technological and economic feasibility of meeting the requirements of the final rule. The technological feasibility of the final rule includes two determinations. MSHA determined that it is feasible to use the continuous personal dust monitor (CPDM) as a compliance device to sample coal miners' exposures to respirable coal mine dust. MSHA also determined that it is feasible for operators to achieve the 1.5 mg/m^3 standard (0.5 mg/m^3 for intake air and part 90 miners) using existing and available engineering controls and work practices. The final rule provides a reasonable amount of time of 18 months after the effective date of the final rule to implement the requirements concerning the use of CPDMs. It also provides a reasonable amount of time of 24 months after the effective date of the final rule to implement the standards. In addition, MSHA determined that the final rule is economically feasible.

2. Technological Feasibility of Using the CPDM as a Compliance Device To Sample Coal Miners' Exposures

This preamble discusses the development of the CPDM over the last 20 years. Development began in the 1990s following a 1992 report issued by MSHA's Coal Mine Respirable Dust Task Group (Task Group) and the 1996 Dust Advisory Committee Report in which both recommended the development of continuous personal dust monitor technology for use in underground coal mines. Prototypes were developed prior to the proposed Plan Verification rulemaking in the mid-2000s. The pre-commercial CPDM is the specific prototype that NIOSH and MSHA, along with input from the mining industry, decided to complete and test in 2006. The commercial CPDM was made available after MSHA's intrinsic safety approval of the pre-commercial CPDM in September 2008 and subsequent NIOSH approval in September 2011 following promulgation of revisions to 30 CFR part 74. Discussion on the development and testing of this technology is summarized below along with comments on the proposed rule.

a. Background Information on the Coal Mine Dust Personal Sampler Unit (CMDPSU) and Continuous Personal Dust Monitors (CPDM)

Since the 1970s, mine operators and MSHA inspectors have used the approved coal mine dust personal sampler unit (CMDPSU) to determine the concentration of respirable dust in coal mine atmospheres. The CMDPSU, which consists of a battery-powered pump unit, a cyclone (a type of particle-size selector) and filter assembly, is either worn or carried by the miner and, under MSHA's existing standards, remains operational during the entire shift or for 8 hours, whichever time is

less. The CMDPSU samples the mine atmosphere by drawing dust-laden mine air, at a flow rate of 2 liters per minute (L/min) through a 10-mm nylon cyclone that removes non-respirable dust particles from the airstream, allowing respirable dust particles to be deposited on the filter surface. The collection filter is enclosed in an aluminum capsule which is sealed in a protective plastic enclosure, called a cassette, to prevent contamination. After completion of sampling, the filter cassette is capped and sent to MSHA for processing, where it is disassembled to remove the filter capsule for weighing under controlled conditions to determine the amount of dust that was collected on the filter. The measured weight gain is used to determine the average concentration of respirable coal mine dust in the work environment of the affected miners.

Because samples are typically transmitted through the mail to MSHA for processing, results of sampling are often not known to mine operators, miners, and MSHA for at least a week or more. Consequently, if results indicate the presence of excessive dust concentrations, any corrective action taken to lower dust levels would only impact miners' exposure a week or more after sampling has been completed. The ability to continuously monitor and give mine operators and miners real-time feedback on dust concentrations in the work environment has been an MSHA goal for nearly three decades.

MSHA's commitment to advanced sampling technology, specifically technology that measures coal mine dust concentration continuously, is noted in the preamble to 30 CFR part 70 dust rules that became effective in April 1980 (45 FR 23990). In response to comments during that rulemaking regarding the machine-mounting of sampling devices that would give a continuous readout of dust concentrations, the Agency agreed that every effort should be made to advance sampling technology. In addition, MSHA stated that the Agency had embarked on an intensive program to develop a reliable machine-mounted continuous dust monitor. At that time, prototypes of such monitors had been developed and were being tested in several mines. Additionally, MSHA noted that the U.S. Bureau of Mines, now NIOSH, was pursuing research in this area. While found to be useful as an engineering tool to monitor the effectiveness of dust controls, those monitors, which were based on light-scattering technology, proved to be unsuitable for enforcement purposes at that time.

The health benefits of continuous monitoring were recognized by MSHA's Coal Mine Respirable Dust Task Group, established in 1991, and the Dust Advisory Committee. In 1992, the Task Group issued a report that concluded that continuous monitoring of the mine environment and dust control parameters offered the best long-term solution for preventing occupational lung disease among coal miners. It specifically recommended development of monitoring technology capable of providing both short-term as well as full-shift concentration measurements. Similarly, the Dust Advisory Committee unanimously recommended in its report issued in 1996 that continuous personal dust monitoring (CPDM) technology, once verified as reliable, be broadly used by MSHA for assessing operator compliance efforts in controlling miners' dust exposures and for compliance purposes.

In response to the recommendations by the Task Group and Dust Advisory Committee, NIOSH undertook an aggressive research and development program in the 1990s to produce a prototype technology for a new type of personal dust monitor that would provide a direct measurement of respirable coal mine dust levels in the mine atmosphere on a real-time basis, unlike the existing sampling system used since 1970. The new technology would eliminate the delay in obtaining an offsite laboratory analysis which, on average, requires a week or more before the results are known to the mine operator and MSHA. Such technology, which is referred to generically as a ''continuous personal dust monitor'' (CPDM), would enable a mine operator to be more proactive in taking corrective measures to avoid miners' exposure to excessive respirable coal mine dust levels and in optimizing mining procedures and dust control parameters to continuously maintain respirable coal mine dust concentrations at or below the dust standard.

NIOSH's efforts to advance the technology for directly measuring and displaying the amount of respirable coal mine dust contained in mine air in real-time resulted in the development of a prototype CPDM in 2003. The prototype CPDM represented the first significant advance in respirable coal mine dust sampling technology in more than 30 years. This prototype dust monitor consisted of a respirable dust sampler, a gravimetric analysis device, and an on-board computer that was incorporated into the miner's cap lamp battery case as a single package located on the belt. The cap lamp battery case contained all the components, including two separate batteries, to enable the dust monitor and cap lamp to operate independently. The CPDM was configured to have dimensions and weight similar to those of the current lead-acid type miner's cap lamp battery. Air from a miner's work environment entered the sampling device through an inlet located adjacent to the lens of the cap light on the miner's hard hat and flowed via a flexible tube that ran parallel to the lamp cord to the belt-mounted device. The air stream was first coursed through a size selector, a Higgins-Dewell (HD) cyclone, at a flow rate of 2.2 L/min to separate the non-respirable dust, so that only airborne particles that could penetrate to the lung were analyzed by the device. From there, the air stream flowed through: (1) A heater that removed excess moisture; (2) a 14-mm diameter glass fiber filter; (3) a flow rate sensor; and (4) a computer-controlled pump.

The prototype CPDM employed a unique inertial mass sensor system called the Tapered Element Oscillating Microbalance (TEOM® system). The TEOM system consists of a hollow tapered tube called the tapered element, which is clamped at its base and free to oscillate at its narrow or free end on which an exchangeable filter cartridge is mounted. Electronics positioned around the TEOM system cause the tapered element to oscillate (or resonate) at its natural frequency. When dust particles are deposited on the collection filter, the mass of the collection filter increases, causing the natural oscillating frequency of the tapered element to decrease. Because of the direct relationship between mass and frequency change, the amount of respirable coal mine dust deposited on the filter can be determined by measuring the frequency change. The concentration of respirable coal mine dust in the mine atmosphere was then determined by a computer incorporated in the CPDM prototype. The computer divided the mass of dust collected by the volume of mine air that passed through the monitor during the sampled period. The result was reported on the monitor's digital display. The data were retained for downloading onto any personal computer using accompanying software. To accommodate monitoring over a full shift, the prototype monitor was designed to operate continuously for up to 12 hours. The display on the device continuously showed: (1) The average concentration from the beginning of the shift; (2) the percent of the respirable dust standard that had been reached; and (3) the respirable dust concentration calculated at distinct 30-minute

intervals. Through the display, both the miner wearing the device and the mine operator were aware of the concentration of respirable coal mine dust at any time during the shift. This information could be used to validate whether dust control parameters were working as intended to ensure that miners were not being exposed to excessive dust concentrations.

While the performance of the prototype CPDM to accurately and precisely measure respirable coal mine dust in the mine environment and its durability under in-mine conditions had not been extensively evaluated when MSHA published its proposed Plan Verification rule (68 FR 10784, March 6, 2003), preliminary indications from the limited testing performed by NIOSH suggested that the prototype CPDM had the potential to provide timely information on dust levels. Although MSHA had confidence in this technology, a final determination of the applicability and suitability of CPDMs under conditions of use being proposed was not expected until after completion of the scheduled laboratory and in-mine testing and evaluation at the end of 2003. MSHA recognized that to be accepted by the mining community, the new CPDM must reliably monitor respirable dust concentrations in the mine environment with sufficient accuracy to permit exposures to dust concentrations to be effectively controlled on each shift. As part of the comprehensive dust control program in the proposed Plan Verification rule, MSHA proposed a new standard to permit, but not require, the use of such monitors to encourage the use of CPDM technology.

Public hearings on the proposed Plan Verification rule, together with MSHA's proposed Single Sample rule (68 FR 10940, March 6, 2003), were held in Pennsylvania, West Virginia, Indiana, Kentucky, Alabama, and Colorado in May 2003. Commenters expressed concern that the proposed sampling program did not incorporate the new CPDM technology. After reviewing the favorable performance of the prototype CPDM in initial in-mine tests, MSHA announced in July 2003 and August 2003, respectively, that it would suspend all work to finalize the proposed dust rules published in March 2003, and the proposed single sample rule published in July 2000, to pursue accelerated research on the new CPDM technology being tested by NIOSH. NIOSH research verifying the CPDM technology, as reliable under in-mine conditions, was being conducted. The comment period was extended indefinitely to assemble the best information available on CPDM technology and its application in coal mines. On successful completion of in-mine performance verification testing of the new technology, MSHA would move forward with a final rule to incorporate new requirements for monitoring exposures that reduce miners' risk of black lung disease.

After enlisting the collaboration of various stakeholders representing industry and organized labor in the final testing of the pre-commercial CPDM, MSHA and NIOSH purchased 25 units for the collaborative study, which was initially conducted in 10 underground mines. This was followed by extended testing at 4 additional mines. Additional test data were also collected by MSHA at the request of NIOSH at 180 randomly-selected mechanized mining units across 10 MSHA coal districts for the purpose of evaluating the equivalency of the CPDM compared to using the then approved CMDPSU.

In September 2006, NIOSH published the results of the collaborative research effort designed to verify the performance of the pre-commercial CPDM in laboratory and underground coal mine environments. According to the NIOSH Report of Investigations 9669, ''Laboratory and Field Performance of a Continuously Measuring Personal Respirable Dust Monitor,'' (Volkwein et al., NIOSH, 2006), the testing of the pre-commercial CPDM under a broad range of test conditions verified it to be accurate and precise in providing end-of-shift dust concentration information. It also stated that the device was acceptable to miners from an ergonomic standpoint, and when worn by miners during normal work, the device demonstrated durable performance with about a 90% availability rate, which is similar to existing sampling devices. This study demonstrated that the pre-commercial CPDM technology was suitable for use in coal mines to monitor and prevent overexposures to respirable coal mine dust.

In September 2008, the commercial model of the CPDM successfully passed MSHA's intrinsic safety tests permitting the device to be purchased for use in coal mines as an engineering tool.

Based on the results of the collaborative study, MSHA published a Request for Information (RFI) on October 14, 2009 (74 FR 52708) on the feasibility of using the commercial CPDM technology to more effectively monitor and control miners' exposure to respirable coal mine dust during a working shift. Most commenters generally agreed that requiring the use of a CPDM would enhance the protection of miners' health.

On April 6, 2010 (75 FR 17512), MSHA and NIOSH published a final rule that revised the approval requirements for the CMDPSU and established new performance-based requirements for the CPDM to permit the Secretaries of HHS and Labor to approve dust monitoring devices for use in coal mines based on new designs and technology capable of continuously monitoring and reporting concentrations of respirable coal mine dust during and at the end of a work shift.

On September 6, 2011, NIOSH approved a commercial CPDM as meeting the CPDM requirements of 30 CFR part 74. Sampling devices, such as the CPDM, can be used for compliance purposes only if they meet the specific performance criteria defined in 30 CFR part 74 and have been approved by the Secretaries of Labor and HHS for use as a compliance sampling device. The performance criteria in 30 CFR part 74 establish the requirements for bias, precision, and reliability that must be met for direct-reading devices such as the CPDM. The results of published NIOSH studies demonstrate that the CPDM meets these performance criteria.

The use of an approved CPDM, which affords real-time respirable coal mine dust exposure measurements, will significantly improve health protection for current and future coal miners by reducing their cumulative coal mine dust exposure and reducing their risk of developing and dying from occupational lung diseases. The approved CPDM is demonstrated to be accurate, precise, reliable, and durable under in-mine use conditions, and is commercially available.

The CPDM is capable of being used in a shift mode, in which the device is programmed by certified persons to operate for specific shift lengths (e.g., 8, 10, 12 hours) to monitor a Designated Occupation (DO) or another sampling entity's exposure, or in an engineering mode for short-term evaluations. If the device is operated in an engineering mode, the person would operate it for short periods of time within the shift to record respirable dust levels during specific mining activities or at specific dust-generation sources in the mine. The display has various screens that show the: (1) Time of day; (2) elapsed time since beginning of the shift; (3) total amount of respirable dust accumulated on the filter since the start of sampling, which is stored in an internal memory for analysis; (4) dust concentrations; and (5) a bar graph of the respirable dust concentration during the entire sampling period. On the bar

graph, each bar represents the average concentration value for each previous 30-minute interval, with a new bar added to the graph every 30 minutes. Also displayed and stored are sampling status conditions that have occurred during sampling. The terminology ''sampling status conditions'' is explained elsewhere in the preamble related to § 70.210. This, along with other information, is stored in the CPDM and can be accessed and downloaded with a personal computer at the end of the shift for analysis, recordkeeping, and posting.

The final rule, like the proposal, requires mine operators to use an approved CPDM to sample designated occupations (DOs) and other designated occupations (ODOs) in each MMU and each part 90 miner. In addition, it permits them to use the approved CPDM or CMDPSU to sample designated areas (DAs) and designated work positions (DWPs). However, the proposal would have required all underground coal mine operators to use approved CPDMs 12 months after the effective date of the final rule to sample DOs on each production shift and part 90 miners on each shift, seven calendar days per week (Sunday through Saturday), 52 weeks per year. The final rule differs from the proposed requirements in that mine operators are required to use the CPDM on consecutive production shifts to collect 15 valid representative samples from each DO and ODO and 5 valid representative samples from each part 90 miner every calendar quarter. In addition, the final rule permits operators of underground anthracite mines to continue to use the approved CMDPSU after the 18-month period. Specific details regarding the change in the period from the proposed 12 months to 18 months after the effective date of the final rule, the option to use CMDPSUs in underground anthracite mines instead of CPDMs, and the reduction in the CPDM sampling frequency, are discussed elsewhere in this preamble under final §§ 70.201, 70.208, 90.201, and 90.207.

b. Technological Feasibility Determination on the Use of the CPDM

MSHA concluded in the Preliminary Regulatory Economic Analysis to the proposed rule (PREA) that requiring the use of the CPDM to sample miner exposures to respirable coal mine dust was technologically feasible. NIOSH, through an informal partnership with MSHA, industry, and organized labor, conducted extensive testing of the CPDM in a variety of underground coal mines.[55] The in-mine testing verified the new sampling device to be accurate and reliable, ergonomically acceptable to miners, and sufficiently durable to withstand the rigors of the underground environment. This testing demonstrated that the CPDM is suitable for use in coal mines to monitor and prevent overexposure to respirable coal mine dust (Volkwein et al., 2004, NIOSH RI 9663; Volkwein et al., 2006, NIOSH RI 9669).

In the PREA, MSHA stated that the CPDM is a new technology and that there are only a few hundred of these devices currently in use. However, MSHA determined that the proposed 12–18 month phase-in period would allow sufficient time to manufacture the necessary quantity of CPDMs. It would also provide sufficient time for operators to conduct training on the use and care of the device.

Many commenters expressed support for using the CPDM as an engineering tool to identify dust sources and reduce dust exposure during a miner's work shift. Some of the commenters were opposed to using it for compliance purposes. Some commenters suggested that MSHA conduct a data-gathering study along with NIOSH and other interested parties using both the gravimetric and CPDM before requiring use of the CPDM. Other commenters suggested that MSHA delay requiring the use of the CPDM until further field testing in coal mines is conducted to address technical concerns about the readiness of the CPDM, its measurement accuracy, and its reliability for long-term use in coal mines. These commenters also suggested that ergonomic improvements be incorporated into the CPDM design to make it more worker-friendly since they believe its weight would cause serious harm to the musculoskeletal system of the miner.

Specifically, some commenters cited results of coal mine operator field testing involving side-by-side sampling in underground mines using the approved CMDPSU and the commercial CPDM. These commenters stated that the sampling results varied greatly and demonstrated that additional development of, and improvement on, the CPDM is needed to provide accurate results in underground mine environments. These commenters also claimed that their independent testing of the CPDM found the devices to be unreliable in typical underground conditions. When tested under the same environmental conditions, the commenters stated that multiple CPDMs reported a wide range of airborne dust concentrations, particularly when operating in elevated temperatures and humidity levels. For example, one commenter stated that only 554 of the 955 (58%) concentrations measured with the CPDM were within 25% of the concentrations measured with the CMDPSU. This commenter concluded that, since the NIOSH definition of accuracy is that the sampling device be accurate to within 25% of the actual concentration 95% of the time, the CPDM does not meet the NIOSH accuracy definition.

NIOSH reviewed the commenters' data regarding the sampling performance of the CPDM. In its comments on the proposed rule, NIOSH stated that it questioned the commenters' interpretation of the data for three reasons.

The analytical methodology used by the commenters was inappropriate for the conditions to which it was applied; several of the commenters inappropriately referred to their data by using a scientific term that could be interpreted in different ways; and none of the commenters' data included statistically representative samples that fully reflect the conditions observed nationwide in underground coal mines.

Regarding the comments that the CPDM did not meet the NIOSH Accuracy Criterion (Kennedy et al., 1995), NIOSH commented that this criterion is designed primarily this criterion is designed primarily for evaluating the accuracy of a sampling and analytical method under controlled laboratory conditions. Although the NIOSH Accuracy Criterion does not require field testing, it recognizes that field testing ''does provide further test of the method.'' However, in order to provide a valid basis for assessing accuracy and avoid confusing real differences in dust concentrations with measurement errors when testing is done in the field, precautions have to be taken to ensure that all samplers are exposed to the same concentrations. If not carried out correctly, field testing yields invalid comparisons and erroneous accuracy conclusions as it did in the commenters' limited field study.

In addition, NIOSH stated that the commenters did not properly define the term ''accuracy'' in their analysis. ''Accuracy'' is defined by referencing two statistically independent and fundamental parameters known as ''precision'' and ''bias.'' Precision refers to consistency or repeatability of results, while bias refers to a systematic error

[55] Section 501(a)(1) of the Mine Act, 30 U.S.C. 951(a)(1), provides that NIOSH shall conduct studies and research to improve working conditions and prevent occupational diseases in the coal mining industry.

that is present in every measurement. Since the NIOSH Accuracy Criterion requires that measurements consistently fall within a specified percentage of the concentration, the criterion covers both precision and uncorrectable bias. NIOSH's experimental design was developed such that the precision and bias of the CPDM could be estimated by regression analysis of data obtained in field environments. Regression analysis is a statistical methodology that uses the relationship between two or more quantitative variables so that one variable can be predicted from the other, or others. The CPDM performance was then compared to the defined and accepted reference standard within the mining industry, which is the gravimetric CMDPSU.

In its comment, NIOSH stated that when evaluating the performance of the CPDM, it collected and analyzed samples that were statistically representative of the nation's underground coal mining industry. The sample set was selected using the Survey Select procedures from the SAS statistical analysis software package. The samples were collected by MSHA inspectors at approximately 20 percent of active mechanized mining units. Statistically representative samples are critical for correctly estimating the bias of the CPDM relative to the gravimetric method of the CMDPSU. Bias may not be properly estimated from studies conducted in a limited number of mines or regions, regardless of the number of samples obtained. The methodology used by NIOSH to collect data was reviewed and approved by various members of the mining community.

In addition, NIOSH noted that none of the commenters' data sets were statistically representative of the entire underground coal mining industry. The largest data set MSHA received came from a commenter who collected 955 samples from 6 of its mines by having miners wear a CPDM and a CMDPSU (gravimetric sampler) concurrently. Unlike the commenter's data, NIOSH data were collected from over 100 mines. Therefore, the NIOSH data set is more representative of the underground mining environment and is more appropriate for evaluating the accuracy and precision of the CPDM and its use as a compliance instrument.

In terms of bias, NIOSH reviewed the results presented by the commenter and concluded that those results support those published by NIOSH. They show that the average concentration measured by the CMDPSU, 0.83 mg/m^3, was virtually identical to the CPDM average value of 0.82 mg/m^3. NIOSH further concluded, from reviewing both the commenter's and NIOSH's data sets, that there was no statistically significant difference between the data sets, and that the bias between the CPDM and the approved CMDPSU is zero. In so concluding, NIOSH noted that, to be strictly correct, dust concentration data are lognormally distributed and, therefore, a simple arithmetic average cannot be calculated from these data. The appropriate method is to average the logarithms of the numbers, followed by un-transformation of the logarithmic averages. This method yields average concentrations that are typically lower than simple arithmetic averages. However, the relative difference between the averages will remain the same in either case.

Regarding the comment that the CPDM variability was too large for it to be used as a compliance instrument, NIOSH commented that there will be no imprecision or variability in the regression if there is total control of all parameters in any given test. In addition, imprecision in a regression is a direct estimate of the degree to which there are unknown and uncontrolled parameters at work during the test. The variability reported by the commenter was primarily due to large sample variability, which was due to uncontrolled variables known to exist in field samples, even when two identical samplers were placed side-by-side. Because the commenter's experimental design did not control for the variability resulting from the samplers themselves, it was not an appropriate estimate of the CPDM's precision. Instead, the data introduced by the commenter included uncontrolled variability potentially caused by significant dust gradients known to exist, sampler inlet location differences, and the nature of mine ventilation. Ventilation currents found in mines can produce widely varying results or seemingly poor precision between two identical side-by-side instruments, even though their inlets may be separated by only a few inches. To correctly estimate the precision of the CPDM, an experimental design must minimize the uncontrolled variables in the sampling. Here, the commenter's data and analysis were based on a flawed experimental design and analysis.

In addition, spatial variability, or the differences in concentration related to location, while sometimes substantial, does not contribute to measurement error. As stated in § 72.800 of this preamble regarding a single, full-shift measurement of respirable coal mine dust, the measurement objective is to accurately measure average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift. The average respirable coal mine dust concentration on a specific shift is being measured at the sampling location.

NIOSH has conducted the necessary scientific studies with approved methods and the results were published in a peer-reviewed document. Through years of work, NIOSH has demonstrated that the CPDM is an accurate instrument that meets the NIOSH Accuracy Criterion and, therefore, can be used as a compliance instrument. (Volkwein et al., NIOSH RI 9669, 2006). The recent NIOSH approval of the commercial CPDM, under 30 CFR part 74, further demonstrates that the CPDM is an accurate compliance sampling device for determining the concentration of respirable dust in coal mine atmospheres.

Some commenters expressed concerns regarding the reliability of the CPDM for long-term compliance use in mines based on their experience using the device. These commenters cited on-site voiding characterized in comments as reported instantaneous errors of samples as a persistent problem. They also stated that 35 to 80 percent of the units in use were returned for service and that the repair time was lengthy. One commenter stated that of the 40 CPDMs purchased, 14 units, or 35 percent, were returned to the manufacturer for repair over a 10-month period, while 5 of the units were returned for repair multiple times, suggesting the devices were less than mine-ready. According to this commenter, 20 percent of the 1,000 samples collected indicated that an error had occurred during sampling and over 6 percent indicated multiple errors. In addition, the analysis encountered numerous diagnostic failures with the CPDM units. Another commenter reported similar equipment and diagnostic issues, as well as failures when exposed to certain radio frequencies. According to this commenter, the failures were not reported by the CPDM and, as a result, may have produced false concentration measurements.

According to NIOSH's comment, these commenters relied on the analysis of data collected by the CPDM at multiple mines without an appropriate experimental protocol to control for data quality. Given that these commenters did not control critical variables like the level of operator training, sampling methodology, and sample size and distribution across mines, the data generated do not provide an appropriate estimate of the CPDM's reliability. In addition, these commenters misunderstood the CPDM error

messages received during their testing, believing that the messages indicated failure of the CPDM. The CPDM, as currently programmed, monitors its performance during sampling and registers any status conditions (errors) logged during the sample run. These messages are not indicative of a failure of the CPDM, rather they provide the user with valuable constructive feedback in real-time concerning sample validity. The frequency and type of these error messages are logged during sample collection. They will be used by MSHA to determine whether samples are valid or should be voided.

In its comment, NIOSH has identified several parameters currently being used as validation criteria. These are based on the existing list of sample validation criteria for the CMDPSU developed over time. Based on MSHA's previous experience, defining the final validation criteria requires routine use of the approved CPDM as a compliance instrument. Given the limited data set, including error messages, from only five mines cited by the commenters as evidence of CPDM failure, both NIOSH and MSHA consider the cited failure rate of 41 errors per 1,000 hours to be invalid. The NIOSH published data remains the most appropriate data set to assess the failure rate of the CPDM.

In addition to proper interpretation of the error messages, NIOSH commented that it used an experimental design in their study that controlled critical variables needed to ensure the quality of data collected. Two factors related to reliability were evaluated, critical repairs and remedial repairs. Critical repairs were considered those that required factory service while remedial repairs were those capable of being performed in the field. Using this experimental design, the critical repair rate of the pre-commercial devices was calculated to be 1.24 repairs per 1,000 hours, with a total rate of 4.75 repairs per 1,000 hours. These repair rates are an order of magnitude less than the failure rates suggested by some commenters due to their inappropriate analysis of the CPDM's error messages as described above. Furthermore, repair rates are expected to improve in general due to the quality control systems required for certification by 30 CFR part 74.

As of June 2011, the CPDM's manufacturer had reported improvements in repair rates. According to this manufacturer, 77 different units, representing 28.8 percent of the total units shipped, were returned a total of 115 times for repair in the previous two years. Repair rates decreased, quarter over quarter, after the first six to eight months of shipments due to process improvements. Also, repair turnaround times, which averaged 26 days per repair the first year following the product launch in May 2009, averaged 15.1 days between July 2010 and June 2011. The average turnaround time in 2011 was 4.7 days. Reliability of the CPDM has improved based on these data, the increasing population of CPDMs in the field, and the reduction in the number of units being returned for servicing, and the actions taken by the manufacturer to address reported field performance.

Some commenters expressed concerns about the CPDM operating reliably, when used in underground mining environments that have elevated temperatures and humidity levels, under certain laboratory conditions, and when exposed to certain radio frequency signals or electromagnetic interference (EMI). These commenters provided supplemental information and analysis of laboratory testing indicating that the CPDM does not respond reliably under all controlled conditions like those that can be encountered in an underground coal mine.

As discussed earlier, the CPDM was initially tested in 10 mines and then further tested in 4 other mines that included a variety of coal types, equipment types, and mining methods, operating conditions, geographic locations, and seam heights. Consequently, the CPDM was subjected to the typical temperature and humidity conditions normally encountered at an underground coal mine. Additionally, sampling packages that included one CPDM and two CMDPSUs were exposed to the full range of environmental conditions encountered at over 100 mines, a good representation of the entire underground mining sector. To be approved under 30 CFR part 74, the CPDM must operate reliably and accurately at any ambient temperature and varying temperatures ranging from −30 °C to + 40 °C; at any atmospheric pressure from 700 to 1,000 millibars; at any ambient humidity from 10% to 100% RH; while exposed to water mists generated for dust suppression; and while monitoring atmospheres including such water mists which is common at longwall mining operations. The differences resulting from temperature and humidity testing reported by a commenter are below the minimum detection limit of the commercial CPDM, which is 0.2 mg/m^3. Therefore, the commenter's conclusions, which are based on these test results, are inaccurate. In addition, the CPDM has a user-selected temperature operating range to optimize performance. The commenter's test procedures did not specify the selected operating range and did not indicate that this range was modified for different temperature ranges.

In addition, the commenter's laboratory testing involved a settling dust test under controlled conditions, which included the application of an outdated U.S. Department of Defense, Military Standard MIL–STD–810F, Method 510.4, Procedure III (January 1, 2000). This laboratory testing was not designed to evaluate the accuracy and precision of airborne dust sampling instruments. Therefore, the accuracy and precision conclusions are inaccurate. The conclusions are also inaccurate because the testing involved talc as a surrogate for respirable coal mine dust. Talc has a size distribution ranging from 0.8 to 1.3 μm and is not representative of respirable coal mine dust, which has a size distribution of 10 μm or less. Furthermore, because the dust chamber did not establish a uniform distribution of respirable dust within the chamber, the reported differences between the CPDMs and between the CPDMs and the CMDPSU would be expected. Since only one CMDPSU was used during testing, an estimate of sampler variability could not be obtained. Lastly, only 7 tests were completed and each test was of limited duration. As a result, the dust settling chamber results submitted by the commenter are flawed and not representative of the actual underground coal mining environment.

Some commenters stated that pre-programming of temperature range selection is difficult in areas such as Alabama which has unseasonable weather. These commenters also stated that high temperature or high humidity causes higher CPDM readings and that the 2006 NIOSH study did not discuss the effect of high temperatures or high humidity.

Certified persons pre-program the CPDMs with environmental conditions that the units are expected to be exposed to on the sampled shift. Temperature and humidity in underground coal mines are fairly uniform and stable and there is little variability experienced on a daily basis. Even when there are seasonal changes, the operators know the temperature and humidity ranges that apply to their mines; the values used to program the CPDMs need to be reasonable but not exact.

Regarding concern expressed about the reliability of the CPDM when exposed to certain radio frequency (RF) signals or electromagnetic interference (EMI), the commercial CPDM meets the

electromagnetic interference requirements of 30 CFR part 74. In addition, MSHA and NIOSH intend to modify 30 CFR part 74 to incorporate approval requirements on electro-static discharge and radiated RF susceptibility. The CPDM manufacturer has redesigned and incorporated changes to the commercial CPDM to ensure that it passes electro-static discharge and radiated RF tests before the CPDM is required to be used for compliance sampling. Testing by an independent lab will provide verification. These changes should eliminate the commenter's concerns.

Some commenters stated that CPDM calibration is too complex and difficult and operators will need to have two units ready for each person to be sampled in case a unit does not properly calibrate.

CPDMs are calibrated by certified persons approximately one to two times per year depending on the number of hours the unit has operated. In the event that a unit were to fail the pre-operational check during the pre-shift warm-up period, the operator would either use another CPDM for sampling, or notify the District Manager orally and in writing that sampling will not occur because a CPDM is not available.

Some commenters stated that the CPDM is not designed to perform in the wet, foggy, and misty atmosphere on the longwall face. They also stated that wetting of the dust inlet due to rain or roof sweats, water head bolters, shearers and jacksetters, and shoveling under the belt will prevent accurate measurement of respirable dust.

The CPDM is designed to perform in such mining environments and uses the cyclone and heating element to prevent moisture affecting the CPDM's determination of respirable dust concentration. This was one of the parameters considered when NIOSH tested the CPDM in underground mine environments, such as at the longwall face, for part 74 approval. The CPDM was found to produce accurate results in accordance with NIOSH's Accuracy Criterion.

One commenter stated that the CPDM collects different dust particle size than the CMDPSU making it inconsistent with prior definitions of hazardous respirable dust that supports the underlying risk and benefit research.

The CPDM and CMDPSU collect essentially the same dust particle size distribution, with the CPDM almost matching the CMDPSU. This is illustrated by the low 1.05 constant factor used by the manufacturer for programming the CPDM to automatically provide an MRE-equivalent concentration, compared with the 1.38 constant factor used for the CMDPSU. Both samplers are designed with the same type of cut points with each sampler using a different cyclone. Each sampler also runs at a different flowrate, which makes the cyclones behave similarly, resulting in the CPDM and CMDPSU capturing almost identical dust particle sizes. This was also a consideration when NIOSH tested the CPDM for part 74 approval.

Some commenters stated that there is no blank cassette analysis to protect against the known deficiencies in the filter system that cause false weight gains.

For a CPDM, there is no need to pre-weigh a filter or to perform a blank cassette analysis to check the filter. During the unit's 30-minute warm-up period, the device zeroes the filter to set a baseline at the beginning of the shift. Anything on the filter or any deficiency in the filter is eliminated as a potential false weight gain. The CPDM then registers any net change in weight of the filter during the shift to correlate the change to a respirable dust concentration measurement.

Some commenters stated that repeated, current lab quality control procedures, audits and checks to help reduce error are not employed for the CPDM. One commenter stated, for example, that lab examinations to determine sample discoloration or evidence of rock dust or other contaminants are eliminated, increasing the probability of inaccurate exposure assessments. Other commenters stated that MSHA currently employs procedures in the sample analytical lab to prevent contamination-induced false results, such as ''oversized,'' nonrespirable particles or sample contamination from other sources. These commenters expressed concern that such protections will no longer be available if the CPDMs are adopted as a compliance mechanism. The commenters stated that CPDMs use an electronic vibration measurement to determine sample weight and the collection filters are not examined by any laboratory for reasons that void large numbers of current samples.

There are no such laboratory examination procedures because the CPDM filters will not be sent to laboratories. The CPDM recognizes when contamination is entering the system (e.g., when water enters the unit, or the unit is overloaded when dropped into a dust powder) and then triggers sampling status condition codes (referred to as error codes in the proposed rule). MSHA's experience is that a relatively small number of samples are voided for contamination or oversize particles. The most common reason that samples are voided is for excess samples that are sent by the operator. For example, of the 41,701 operator CMDPSU samples submitted to MSHA in 2009, approximately 15.6% were voided. Of those voided samples, approximately 5.48% were voided for submission of excess samples, 0.11% for oversize particles, and 0.50% for contaminated samples (U.S. Department of Labor, MSHA, 2012a).

Some commenters stated that, based on limited experimentation, a new but suspect conversion factor (1.05 CPDM vs. 1.38 CMPDSU) is used to relate CPDM results to the British MRE sampler on which U.S. health-based dust risks, benefits, and limits were based.

As noted in the preamble to the proposed rule, NIOSH researchers (Page et al., 2008) determined that measurements of respirable dust concentrations using the CPDM and CMDPSU are comparable. The MRE was used as the basis for the existing coal mine respirable dust standards and had been designed specifically to match the United Kingdom British Medical Research Council (BMRC) criterion. The CMDPSU is used with a 1.38 multiplier to convert readings to the BMRC criterion.

In order to compare CPDM measurements with those of the CMDPSU, NIOSH conducted field research. Researchers used a stratified random sampling design that incorporated a proportionate allocation strategy to select a sample of MMUs representative of all U.S. underground coal mines. A sample of 180 MMUs was chosen, representing approximately 20% of the MMUs in production at the time the sample was selected (September 2004). Dust concentrations were monitored concurrently by both CMDPSUs and CPDMs for a full shift. A total of 129 valid CPDM/CMDPSU dust sample sets were obtained. A weighted linear regression analysis of this database shows that, in comparison with the CMDPSU, the CPDM requires a mass equivalency conversion multiplier of 1.05 [95% Confidence Interval (1.03 to 1.08)] to produce a concentration that is an MRE-equivalent concentration similar to the CMDPSU. This research shows that the two types of sampling units are very comparable due to this linear relationship.

One commenter stated that the CPDM does not distinguish between coal dust, rock dust, or any other dust that may be in the air.

No approved sampling device distinguishes between types of respirable dust measured at coal mines. The respirable dust standards in Parts 70, 71, and 90 are environmental standards that apply to respirable coal mine dust in the mine atmosphere. Any respirable dust in the mine atmosphere is considered respirable coal mine dust to which miners are exposed and, when measured, is counted for determining compliance with the respirable dust standards.

Some commenters stated that requiring miners to frequently read the CPDM monitor is a safety concern because it distracts miners while doing their job. One commenter noted that use of the CPDM interfered with shuttle car operator's running of the shuttle car.

MSHA recognizes that anything new has the potential to attract attention. However, it is the certified person, not the miner, who is required under final § 70.205(c) to monitor the dust concentration being reported by the device at mid-shift or more frequently as specified in the operator's approved mine ventilation plan. Under final § 70.201(h), miners will be provided training on the various types of information displayed on the CPDM screen. At that time, operators can stress that miners should only make such observations when it is safe to do so.

Some commenters pointed to studies that show that carrying a load can result in both physiological and biomechanical changes, discomfort, higher rates of musculoskeletal disorders (MSDs) and increased risk of falls. For example, a NIOSH study, Information Circular (IC) 9501-Miners' Views about Personal Dust Monitors (Peters et al., 2008), provided limited insight into ergonomic issues associated with wearing a CPDM. Commenters noted that the NIOSH study followed a previous model, which found that perceived negative features or barriers could affect an individual's actions regarding the use of the CPDM to assess and reduce his or her dust exposures. Commenters stated that, for the NIOSH report, 30 miners were interviewed and that some miners reported issues with sitting in equipment due to the limited space in operator compartments and with the CPDM getting bumped when working in confined areas. In addition, some miners said when the CPDM was attached to the belt with no clips, it sometimes falls off the belt, and when pouches were provided to hold the CPDM, sometimes there was not enough room on the belt for the pouch because of the other pouches already on the belt. Commenters noted that 11 miners who had worn the CPDM responded to a questionnaire and that 82 percent had problems that included discomfort, weight issues, difficulty wearing it on the miner's belt, being in the way when interfacing with equipment, and many errors occurring.

The 2008 NIOSH study (Peters et al., 2008) cited by commenters was based on a pre-commercial model of the CPDM. Since that time, the manufacturer has improved the unit's design, incorporating a better means of attaching the unit to the miner's belt and providing a shorter cap lamp cord. These improvements allow better positioning of the CPDM on the miner. NIOSH evaluated the commercial CPDM model and, in September 2011, determined that it met the CPDM approval requirements of 30 CFR part 74, which include that the CPDM be designed and constructed so that miners can wear and operate the CPDM without impeding their ability to perform their work safely and effectively.

In addition, many commenters expressed concern about the weight of the CPDM and the size and stiffness of the sampling hose and light cord assembly. Some commenters stated that requiring miners to wear the CPDM, many of whom have become accustomed to wearing the smaller and lighter cap light compared to the lead acid battery, will suffer serious musculoskeletal disorders, which have been on a decline.

MSHA notes that under the final rule, miners will wear the CPDM less since the frequency of required sampling is significantly reduced from the proposal, which would have required 24/7 sampling of the DO and the part 90 miner. This is discussed elsewhere in the preamble under final §§ 70.201, 70.208, and 90.207.

Also, NIOSH commented that when the configuration of the CPDM was conceived in 1999 at the urging of the mining community, miners typically wore both a self-contained self-rescuer (SCSR) on their mining belt and a battery to power their cap lamp. Integrating the CPDM with the cap lamp battery reflected the available technology at that time. The current CPDM integrates the dust sampler and cap lamp battery, with a total weight that is within 8 ounces of the traditional lead acid cap lamp battery alone, a power source that is still in use.

According to an MSHA survey of 418 coal mines in October 2010, which was completed after publication of the proposed rule, 47 percent of the cap lamps in use were being powered by lead-acid batteries. In its comment, NIOSH noted that traditional lead acid cap lamp batteries weigh over 5 pounds. The total relative increase in the weight of the miner's belt is low given that only 8 ounces is added by combining the CPDM with the cap lamp battery. Not only is the marginal weight change of the miner's ensemble an important factor regarding biomechanical loading, but the resultant weight distribution characteristics (especially height and anterior-posterior of center of mass) are important with respect to balance issues. Studies, by Lin et al. (1996) and Dempsey et al. (1996), show that user preferences and biomechanics of different loading configurations are complex but, the least problematic configuration was the placement of two symmetric loads below hip level with two shoulder straps and a waist belt. Although this configuration used criss-crossed straps, it was otherwise similar to a typical miner's belt configuration. A miner's belt may be more effective at reducing shoulder loads because it transfers the load to the hips, which reduces the risk of injury to the shoulders and back.

Commenters suggested that, because recent advances in cap lamp technology have reduced the size and weight of the battery, the CPDM should not be used as a compliance instrument until it accommodates this new technology. Other commenters suggested separating the dust sampler from the cap lamp. Ultimately, the existing design of the CPDM may be modified to accommodate the change in cap lamp technology. The CPDM manufacturer has reported plans to improve the ergonomic design of the unit. Changes include a shorter cap lamp cord to minimize tangling, especially in low coal; removal of the cap lamp due to recent approvals of wireless cap lamps; and possible reduction in weight.

Some commenters stated that the CPDM should not be required until it can measure silica exposures.

Neither the CMDPSU nor the CPDM is able to measure quartz in respirable coal mine dust samples. MSHA will continue to collect respirable dust samples to analyze for quartz to establish applicable respirable dust standards and limit miners' quartz exposure. Also, as discussed elsewhere in the preamble related to § 70.101, the final rule does not change the existing respirable dust standard when quartz is present.

Some commenters expressed concern that there is only one CPDM manufacturer and, therefore, requiring use of the CPDM results in guaranteed sales regardless of price, performance, or quality of service, and there will be little incentive for the manufacturer to address issues limited to a small

segment of customers. Based on its experience with the CPDM manufacturer, MSHA does not anticipate the concerns expressed by the commenters. The Agency anticipates a continuation of the same high level of cooperation that the manufacturer of the CPDM has shown to date.

Some commenters stated that there should be a 24-month interim period before a new standard becomes effective. The commenters suggested that during this period the gravimetric sampler should be used while a joint labor, industry, MSHA, and NIOSH committee consider problems that may arise as the CPDM and new standards are integrated into underground mining. As the mining industry knows, MSHA and NIOSH jointly approved the CPDM for use in underground coal mines, and determined that the device was accurate, precise, reliable, and durable under in-mine conditions. MSHA intends on taking the lead in conducting a retrospective study beginning February 1, 2017. MSHA also intends to evaluate the data collected using CPDMs to determine whether (1) the 1.5 mg/m^3 respirable dust standard should be lowered to protect miners' health; (2) the frequency of CPDM sampling should be increased; (3) engineering controls and work practices used by mine operators achieve and maintain the required respirable coal mine dust levels; and (4) samples taken on shifts longer than 8 hours should be converted to an 8-hour equivalent concentration to protect miners who work longer shifts. Using the results of this study, MSHA intends to identify best practices that can be shared with the mining community. Under the Department's Plan for Retrospective Analysis of Existing Rules, MSHA intends to consult with industry, labor, NIOSH, and other stakeholders to determine how these best practices can be replicated throughout mines to achieve similar results.

This retrospective study will be conducted in accordance with the Department of Labor's Plan for Retrospective Analysis of Existing Rules which complies with Executive Order (E.O.) 13563 ''Improving Regulation and Regulatory Review'' (76 FR 3821). E.O. 13563 requires agencies to—

> develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. [76 FR 3822]

The Department of Labor's Plan for Retrospective Regulatory Review—

> is designed to create a framework for the schedule and method for reviewing its significant rules and determining whether they are obsolete, unnecessary, unjustified, excessively burdensome, counterproductive or duplicative of other Federal regulations.

Sections 70.201 and 90.201 of the final rule provide that operators must use CPDMs 18 months after the effective date of the rule. In the event of any logistical or feasibility issues involving the availability of the CPDM, MSHA will publish a notice in the **Federal Register** to continue to use an approved CMDPSU to conduct sampling. In addition, assuming no technological issues arise concerning the use and manufacture of CPDMs, and depending on manufacturer projections, if CPDMs are not available in sufficient quantities, MSHA will accept, as good faith evidence of compliance with the final rule, a valid, bona fide, written purchase order with a firm delivery date for the CPDMs.

3. Technological Feasibility of Achieving the Required Dust Standards

MSHA concluded, in the PREA, that compliance with the respirable dust standards in the proposed rule was feasible on each shift because the sampling data indicated that mine operators are keeping miners' average exposures at or below the levels required under the existing standards, and dust exposures at most operations average less than the proposed standards of 1.0 mg/m^3 for underground and surface coal mines, and 0.5 mg/m^3 for part 90 miners and intake air. MSHA acknowledged, however, that some of the proposed requirements regarding the use of single full-shift samples to determine noncompliance on each shift and changes to the definition of normal production shift would result in higher exposure measurements when compared to the existing sampling program. MSHA concluded that existing engineering controls including ventilation, water sprays and environmentally controlled cabs along with changes in work practices can be used to further reduce dust levels. Engineering controls are the primary means used to control respirable coal mine dust exposures. Work practices may be used to further reduce dust levels. In addition, MSHA acknowledged that in rare instances, some operators, after taking these actions, may encounter implementation issues as they attempt to comply with the proposed requirements and need to take additional measures to comply with the proposed standards. To allow mine operators adequate time to comply with the proposed respirable dust standards, MSHA included a two-year phase-in period for the 1.0 mg/m^3 proposed standard for underground and surface coal mines, and a six-month phase-in period for the 0.5 mg/m^3 proposed standard for part 90 miners and intake air.

Many commenters expressed concern with complying with the proposed 1.0 mg/m^3 standard for underground and surface coal mines on each shift. They stated that they have incorporated all available engineering and administrative dust controls and that they cannot lower respirable dust levels any lower than the existing 2.0 mg/m^3 standard. In addition, several commenters stated that MSHA incorrectly assessed the feasibility of the proposed 1.0 mg/m^3 standard for underground coal mines. These commenters stated that the vast majority of operators cannot meet the proposed 1.0 mg/m^3 standard on a single shift sampling basis at any single mine over any substantial period of time. They stated that operators may be able to meet the proposed standard some of the time, but will not be able to meet the proposed standard all of the time, as would have been required by the proposed rule. Other commenters stated their calculations showed that, as opposed to less than 200 citations per year for violations of the current 2.0 mg/m^3 standard, a 1.0 mg/m^3 standard based on a single, full-shift measurement could result in more than 230,000 citations annually. In addition, some commenters stated that each violation would require abatement, a penalty, and mine plan amendments, and would likely result in mine interruptions until plan approvals can be obtained and abatement accomplished. These commenters stated that by averaging results from the current dust sampling system and not using the latest 2010 database of single shift sample results to determine compliance impacts under the proposed rule, MSHA improperly masked the feasibility of the proposal. Lastly, some commenters stated that MSHA did not support its conclusion that existing engineering controls and changes in work practices can be used to further reduce dust levels. These commenters, however, did not provide any definitive data to support their statements.

During the development of the final rule, MSHA evaluated the rulemaking record, including public comments, and the potential impacts of alternatives to

the proposed rule. As a result of this evaluation, the final rule addresses the commenters' concerns in several ways. First, the final rule includes a respirable dust standard of 1.5 mg/m³ for underground and surface coal mines. MSHA's rationale for the 1.5 mg/m³ standard is discussed elsewhere in this preamble under §§ 70.100 and 71.100. MSHA's analysis of the technological feasibility of the 1.5 mg/m³ standard for underground and surface coal mines and the 0.5 mg/m³ standard for part 90 miners and intake air on each shift is discussed below.

Second, the final rule requires sampling of designated occupations (DOs) on 15 consecutive shifts each quarter. The proposal would have required sampling of DOs on each and every shift.

Third, the final rule provides that noncompliance with the respirable dust standard is demonstrated during the sampling period when either two or more samples out of five operator samples or three or more samples out of fifteen operator samples meet or exceed the applicable excessive concentration value (ECV), or the average for all operator samples meets or exceeds the applicable ECV.[56] A detailed discussion on the ECVs is in Appendix A of this preamble. MSHA constructed the ECVs to ensure that a citation is issued when the respirable dust standard is exceeded. The ECVs ensure that MSHA is 95 percent confident that the applicable respirable dust standard has been exceeded. Each ECV accounts for the margin of error between the true dust concentration measurement and the observed dust concentration measurement when using the CMDPSU or the CPDM.

Under the proposal, noncompliance determinations would have been made on an operator's single full-shift sample that met or exceeded the ECV or a weekly accumulated exposure that exceeded the weekly permissible accumulated exposure.

Finally, MSHA has revised the methodology used to assess the technological feasibility of meeting the respirable coal mine dust standards. To evaluate the impact of the final rule, MSHA retained the adjustment factor used in the PREA for normal production. MSHA did not retain the adjustment factor to estimate an equivalent 8-hour concentration for work shifts longer than 8 hours. Like the proposal, MSHA's feasibility analysis is based on sampling data from samples collected in 2008 and 2009. Rather than using both operator and inspector samples as was done for the proposal, this final analysis is based solely on MSHA inspector samples. MSHA has more confidence in MSHA inspector samples for the reasons discussed in Section 1(a) of the QRA for the final rule.

As in the PREA, these data reflect measurements under the existing sampling program. The definition in the final rule for a normal production shift will result in higher exposure measurements when compared to the existing sampling program. Therefore, as in the PREA, each individual sample is adjusted to account for normal production as defined by the final rule.

Even without an adjustment for work shifts longer than eight hours, the final rule results in more representative measurement of dust concentrations to which miners are being exposed on a daily basis in the active workings. Under final §§ 70.201(c), 71.201(b), and 90.201(b), sampling is conducted over the entire work shift. Since the work shift for many miners normally extends beyond eight hours, the reported sampling results for the 2008 and 2009 period likely understate miners' everyday coal mine respirable dust exposures. MSHA anticipates an increase initially in the observed dust concentrations under the final rule.

To evaluate the impact of the proposed rule for feasibility purposes, MSHA applied two adjustment factors to the 2008–2009 data. The first factor adjusted the 2008–2009 sample data to estimate an equivalent 8-hour concentration for work shifts longer than eight hours. The second factor adjusted the sample data for normal production. After consideration of the comments and relevant data, MSHA is not including in the final rule the provision that adjusts respirable coal mine dust measurements for shifts longer than 8 hours. The rationale for not including this provision is discussed elsewhere in the preamble discussion of the equivalent concentration definition under § 70.2.

To evaluate the impact of the final rule for feasibility purposes, MSHA retained the adjustment factor for normal production that was applied to the 2008–2009 data. In deriving the normal production adjustment factor for underground mines, MSHA applied a conservative method using production data for the previous 30 production shifts collected from mine operators during the Agency's enforcement activities in October 2009. First, the average shift length was calculated for underground operations. Using 2009 shift length information for each mine stored in the MSHA Standardized Information System (MSIS) database, MSHA determined that the average shift length for longwall MMUs was 10 hours and the average for non-longwall MMUs was 9 hours. The 30-shift average production was calculated for each of the 193 MMUs that were inspected. These production values were then averaged across all non-longwall and longwall MMUs, yielding estimated overall 30-shift averages of 921 tons and 7,355 tons, respectively. These averages were then divided by the average shift length for the MMU type established earlier to estimate average production rate in tons per hour. For example, to estimate the overall longwall MMU production rate, 7,355 tons, which represents the full-shift production, was divided by 10 hours, yielding an estimated production rate of 736 tons/hour. The same calculation was performed for non-longwall MMUs resulting in a production rate of 102 tons/hour (921 tons ÷ 9 hrs).

Next, the production reported for each MSHA inspector and operator sample collected during CY 2009 was averaged across all non-longwall and longwall MMUs. This yielded overall 8-hour averages of 672 tons and 5,537 tons, respectively, for MSHA inspector samples, and 703 tons and 5,398 tons, respectively, for operator compliance samples. These averages were then divided by 8 hours, yielding estimates of the average production rate across the respective MMU types. For example, the production rate for operator samples was estimated at 88 tons/hour (703 tons/8 hr) for non-longwall MMUs and 675 tons/hour (5,398 tons/8 hr) for longwall MMUs.

These estimates of average production rates were used to derive the industry-wide production factors by dividing the estimated overall 30-shift average production rate by the overall CY 2009 average production rate. In the case of non-longwall MMUs, each operator DO concentration was multiplied by 1.16 (102/88 tons/hr). And, each longwall MMU sample was multiplied by 1.09 (736/675 tons/hr).

Although some commenters stated that MSHA's feasibility assessment of the proposed rule was based solely on historical averages, that assessment was based on the mean (or average) concentrations, the average deviation of sample concentrations from standards, and the percentage of observations above the standard. For the final rule, MSHA presents these summary statistics for more detailed occupations than were presented for the proposal

[56] In the final rule, compliance determinations are also based on single full-shift MSHA inspector samples. MSHA inspectors sample a small fraction of a mine's production shifts to ensure that dust levels are at or below the standard.

and also presents the median. MSHA also calculated the average deviations in a slightly different manner than was done for the proposal. Rather than computing the deviation from the existing standards as was done for the proposal, the deviation in this analysis is the deviation from the final standard or the existing standard, whichever is lower.

The means and medians of the detailed occupations and locations are measures of central tendency and help to answer the question of whether typical dust levels in each operation/location currently meet the standards. If both the mean and median of the inspector samples collected in various mines over the two-year period are less than the final standard, then MSHA concludes that typical dust levels for that occupation/location currently meet the standard. The percentage of observations currently above the final standards for each occupation/location indicates the probability that an MSHA inspector will find a violation for a single full-shift sample exceeding the standard in the final rule.[57] The average deviation of the sample concentrations from the existing standard or final standard provides an indication of the degree to which mine operators are currently meeting the standards in the final rule. In addition, the average deviation takes into account the reduced standards below 1.5 mg/m^3. A negative average deviation indicates how much exposures average below the 1.5 mg/m^3 standard and any reduced standard below 1.5 mg/m^3 that was in effect at the time the samples were taken.

Summary data for various types of coal mining are presented in the following sections. After each presentation, MSHA also discusses the currently available dust control technology which can be used to reduce exposures that exceed the final standard. As was noted in the PREA, these technologies are also discussed in several NIOSH publications available at: *http://www.cdc.gov/niosh/mining/topics/RespirableDust.html*. In response to comments, the discussions of the control technologies are more extensive in this assessment than those presented in the assessment of the proposed rule.

MSHA reviewed MMU data where an inspector collected a respirable dust sample that, after adjustments to represent the normal production on that shift, would have exceeded a concentration of 1.5 mg/m^3. Specifically, MSHA looked at all longwall and approximately 20% of non-longwall MSHA MMU dust surveys collected during the fourth quarter of calendar year 2009 where the adjusted concentrations would have exceeded 1.5 mg/m^3. MSHA reviewed measurements of the engineering controls in use on the day each sample was collected to assess whether using additional engineering controls would have likely reduced the dust concentration to levels at or below 1.5 mg/m^3. Every survey indicated that additional control measures are available that would be likely to reduce the respirable dust concentration to 1.5 mg/m^3 or less. MSHA determined that many MMUs could: Increase air quantity, air velocity, the number of water sprays, and the water pressure; balance the quantity of air delivered to the face with the scrubber air quantity; and/or change from blowing face ventilation to exhausting face ventilation. Changing one or more dust controls is an option at all MMUs that MSHA reviewed. On nearly all MMUs that used blowing face ventilation and a scrubber, the air quantity provided was less than the scrubber air quantity, causing an imbalanced system and the potential for respirable dust overexposures. Many MMUs using exhausting face ventilation had air quantities that would produce Mean Entry Air Velocities (MEAV) of less than 100 feet per minute (fpm), which indicates that the air provided could be increased to provide greater protection of miners' health. The number of water sprays, while important, is not the only spray variable affecting dust control; the location, flow rate, spray pattern, and droplet size are variables that impact dust levels where miners work. The dust control data that MSHA reviewed is contained in two spreadsheets titled ''MSHA Longwall Surveys with Adjusted Concentrations of 1.5 mg/m^3 Dust Controls, Oct–Dec 2009'' and ''MSHA Random Non-Longwall Surveys with Adjusted Concentrations of 1.5 mg/m^3 Dust Controls, Oct–Dec 2009'' (U.S. Department of Labor, MSHA, 2012b and 2012c). Detailed discussions of these dust control technologies follow.

Some commenters expressed concern with the phase-in periods in proposed §§ 70.100, 71.100, and 90.100 regarding the respirable dust standards, § 70.101 regarding the respirable dust standard when quartz is present, and § 75.350 regarding the respirable dust standard in the belt air course. The final rule is changed from the proposal. It includes a 24-month implementation date in each of these sections to provide an appropriate amount of time for mine operators to comply with the standards in the final rule. Comments on the proposed phase-in periods and MSHA's rationale for the 24-month period in the final rule are discussed elsewhere in this preamble under final §§ 70.100, 70.101, 71.100, 75.350, and 90.100.

a. Surface Coal Mines and Facilities

Table IV–1 presents a summary of the 2008–2009 sampling data for surface coal mines and facilities by selected occupations. Of the more than 4,500 samples taken by MSHA inspectors at surface coal operations and facilities during 2008 and 2009 approximately 5% exceeded the standard and the average deviation was 0.69 mg/m^3 below the standard. The mean and median of the samples were 0.47 mg/m^3 and 0.26 mg/m^3, respectively. MSHA believes that these data overstate the exposures at surface coal operations and facilities because, rather than conducting random sampling, MSHA inspectors tend to sample operations where they believe respirable coal mine dust levels are high. Based on these data, MSHA concludes that most operations at surface mines and facilities can meet the 1.5 mg/m^3 standard without significant changes on each shift.

TABLE IV–1—SUMMARY OF 2008–2009 SAMPLING DATA FOR SURFACE COAL MINES AND FACILITIES, BY SELECTED OCCUPATIONS

Occupation	Number of samples	Mean mg/m^3	Median mg/m^3	Pct. > standard *	Avg. deviation mg/m^3
Bulldozer Operator	1,118	0.28	0.16	1	-0.50
Cleaning Plant Operator	175	0.75	0.59	13	-0.75
Cleanup Man	108	0.55	0.44	2	-0.95
Crusher Attendant	104	0.62	0.35	12	-0.71

[57] For this analysis, MSHA used the standard even though a sample would have to meet or exceed the ECV for there to be a violation under the final rule.

TABLE IV–1—SUMMARY OF 2008–2009 SAMPLING DATA FOR SURFACE COAL MINES AND FACILITIES, BY SELECTED OCCUPATIONS—Continued

Occupation	Number of samples	Mean mg/m³	Median mg/m³	Pct. > standard *	Avg. deviation mg/m³
Fine Coal Plant Operator	177	0.84	0.71	14	-0.66
Highlift Operator/Front End Loader	160	0.28	0.12	1	-1.08
Highwall Driller	797	0.43	0.24	4	-0.44
Laborer/Blacksmith	179	0.52	0.34	8	-0.90
Mechanic	194	0.49	0.37	4	-1.00
Other **	799	0.47	0.28	5	-0.83
Refuse Truck Driver/Backfill Truck Driver	162	0.30	0.24	0	-1.13
Utility Man	386	0.71	0.44	12	-0.76
Welder (NonShop)	188	0.69	0.24	10	-0.81
Total	4,547	0.47	0.26	5	-0.69

* 1.5 mg/m³ or a reduced standard below 1.5 mg/m³.
** Occupations with fewer than 100 samples.
Source: Tabulation of MSHA MSIS Data.

The highest mean and median exposures and the greatest percentage of samples exceeding the standard were for the cleaning plant and fine coal plant operators. As MSHA stated in the PREA, workers in surface facilities can be protected by enclosing the dust-generating processes, placing the operator in an environmentally controlled booth, using dust collectors to limit the amount of dust that becomes airborne, ensuring that the equipment is being maintained and functioning properly, and following good work practices.

As MSHA noted in the PREA, engineering controls and work practices are also available to reduce the dust concentrations at other surface work locations. According to NIOSH's Best Practices for Dust Control in Coal Mining (Best Practices), most of the dust generated at surface mines is produced by mobile earth-moving equipment such as drills, bulldozers, trucks, and front-end loaders, excavating silica-bearing rock and minerals. There exist four practical areas of engineering controls to mitigate surface mine worker exposure to all airborne dusts, including silica. Those are drill dust collection systems including wet suppression, enclosed cab filtration systems, controlling dust on unpaved haulage roads, and controlling dust at the primary hopper dump. (Colinet et al., 2010 NIOSH Information Circular 9517, Best Practices for Dust Control in Coal Mining, (''NIOSH IC 9517''), pp. 65–72.)

MSHA concludes that it is technologically feasible for surface coal mines and facilities to comply with the 1.5 mg/m³ standard in the final rule on each shift.

In addition, a review of the 2008–2009 operator-submitted respirable coal mine dust samples used for the proposed rule shows 97 surface mines operating on reduced standards of 0.5 mg/m³ or less. Many mines submitted respirable dust samples that routinely indicate the mine is able to operate and still control dust at or below the 0.5 mg/m³ level. For operator-submitted respirable dust samples for 2008 and 2009, 65% of all valid samples were at or below 0.5 mg/m³. The engineering controls and work practices available to reduce quartz exposure at surface mines are the same as those described above for reducing dust levels at surface coal mines and facilities.

b. Intake Air at Underground Coal Mines

Table IV–2 presents a summary of the 2008–2009 inspector intake air samples at underground coal mines. Of the more than 8,200 samples taken by MSHA inspectors in underground coal operations during 2008 and 2009, less than 6% exceeded 0.5 mg/m³ and the average deviation was 0.33 mg/m³ below the 0.5 mg/m³ standard. The mean and median of the samples were 0.17 mg/m³ and 0.11 mg/m³, respectively. Based on these data, MSHA concludes that most intake air can meet the 0.5 mg/m³ standard without significant changes on each shift.

According to NIOSH's Best Practices, maintaining this concentration is not usually difficult, but it requires attention from mine operators to address activities that can raise intake air dust levels. Typically, high levels of intake air dust are sporadic and brief in nature due to activities in the intake air entries that may take place over the course of a working shift. These sporadic activities include delivery of supplies and/or personnel, parking equipment in the intake, rock dusting, scoop activity, and construction activity. (NIOSH IC 9517, 2010, p. 61.)

TABLE IV–2—SUMMARY OF 2008–2009 INSPECTOR INTAKE AIR SAMPLES AT UNDERGROUND COAL MINES

Location	Number of samples	Mean mg/m³	Median mg/m³	Pct. > 0.5 mg/m³	Avg. deviation mg/m³
Not Belt Air	7,655	0.15	0.10	3.5	−0.35
Belt Air	613	0.43	0.35	28.1	−0.07
Total	8,268	0.17	0.11	5.3	−0.33

Source: Tabulation of MSHA MSIS Data.

The highest mean and median exposures and the greatest percentage of intake air samples exceeding 0.5 mg/m³ were taken in belt entries. The average deviation for the belt air samples was less than 0.1 mg/m³ below the 0.5 mg/

m³ standard. One commenter specifically supported respirable dust control and reduction in dust levels for intake air because intake air goes straight to the face.

According to NIOSH's Best Practices, when belt air is used for face ventilation, dust generated in the belt area should be controlled. Dust controls at the belt head helped maintain low dust levels in the belt entry. Automated water sprays were used to suppress dust at the section-to-main belt transfer point. A belt scraper equipped with water sprays controlled dust by cleaning the outside surface of the belt after the coal had been transferred to the main belt. (NIOSH IC 9517, 2010, p. 61.)

In addition, because the potential for dust from the belt entry to contaminate the face area has increased in recent years due to the increased quantity of coal being transported by the belt, NIOSH states that the following practices can help control respirable dust levels in the belt entry: Belt maintenance, wetting the coal product during transport, belt cleaning by scraping and washing, use of a rotary brush that cleans the conveying side of the belt, and wetting dry belts. (NIOSH IC 9517, 2010, pp. 18–19.)

MSHA concludes that it is technologically feasible for mine operators to meet the 0.5 mg/m³ standard for intake air on each shift. As noted in the PREA, many of the high dust concentrations for intake air represented samples taken while belt entries were being used as intake air courses. Dust concentrations in the belt entry, when used as an intake air course, can be consistently maintained at or below the final standard by employing currently available engineering controls such as water sprays at transfer points to adequately wet the conveyor belt and transported coal, combined with regular belt maintenance and cleaning of the belt entry. Moreover, no mine is required to use belt entries as intake air courses and relatively few do (less than 40 mines in 2009). If maintaining the belt entries is burdensome, an operator has the option of using another entry for intake air.

c. Part 90 miners

Table IV–3 presents a summary of the 2008–2009 sampling data for part 90 miners. Of the 500 samples taken by MSHA inspectors for part 90 miners during 2008 and 2009, approximately 23% exceeded 0.5 mg/m³ and the average deviation was 0.13 mg/m³ below the applicable standard. The mean and median of the samples were 0.37 mg/m³ and 0.24 mg/m³, respectively. These data indicate that current dust levels for the part 90 miners meet the final 0.5 mg/m³ standard. In addition, dust levels for part 90 miners will likely decline under the final rule after operators implement controls to reduce the dust levels in the intake airways and active workings. Further, there are currently fewer than 70 part 90 miners out of an underground coal work force of approximately 50,000 miners. A mine operator may further reduce the dust levels of a part 90 miner by limiting the time that the part 90 miner spends in high dust areas, such as at the face for underground miners; on the surface, for example, an operator can move a part 90 miner to a less dusty job or place the miner in an environmental cab. Finally, part 90 miners can avoid areas of the mine that are under a reduced dust standard due to the presence of quartz. Therefore, MSHA concludes that it is technologically feasible for mine operators to meet the final 0.5 mg/m³ standard for part 90 miners on each shift.

TABLE IV–3—SUMMARY OF 2008–2009 SAMPLING DATA FOR PART 90 MINERS

Number of samples	Mean mg/m³	Median mg/m³	Pct. > 0.5 mg/m³	Avg. deviation mg/m³
502	0.37	0.24	23	−0.13

Source: Tabulation of MSHA MSIS Data.

d. Non-Longwall Underground Mining Operations

Table IV–4 presents a summary of the adjusted 2008–2009 sampling data for non-longwall operations in underground coal mines by selected occupations. Of the nearly 38,000 samples taken by MSHA inspectors at non-longwall operations in underground coal mines during 2008 and 2009, after adjustment, approximately 9% exceeded the standard and the average deviation was 0.68 mg/m³ below the standard. The mean and median of the samples were 0.75 mg/m³ and 0.59 mg/m³, respectively, approximately half of the 1.5 mg/m³ standard.

TABLE IV–4—SUMMARY OF ADJUSTED 2008–2009 SAMPLING DATA FOR NON-LONGWALL OPERATIONS IN UNDERGROUND COAL MINES, BY SELECTED OCCUPATIONS

Occupation	Number of Samples	Mean mg/m³	Median mg/m³	Pct. > Standard *	Avg. deviation mg/m³
Coal Drill Operator	194	0.75	0.61	8	−0.73
Continuous Mining Machine Helper	656	0.79	0.64	8	−0.63
Continuous Mining Machine Operator	7,595	0.99	0.81	17	−0.44
Cutting Machine Operator	185	1.14	0.91	25	−0.35
Electrician	949	0.40	0.31	2	−0.98
Laborer	257	0.40	0.30	5	−1.03
Loading Machine Operator	284	0.36	0.30	0	−1.12
Mechanic	406	0.56	0.45	4	−0.86
Mobile Bridge Operator	1,283	0.80	0.67	9	−0.69
Other **	407	0.59	0.41	6	−0.82
Roof Bolting Machine Operator	8,651	0.74	0.60	8	−0.70
Scoop Car Operator	3,574	0.69	0.53	8	−0.74
Section Foreman	385	0.64	0.50	7	−0.78
Shuttle Car Operator	11,867	0.68	0.54	7	−0.74
Tractor Operator/Motorman	275	0.53	0.41	3	−0.91

TABLE IV–4—SUMMARY OF ADJUSTED 2008–2009 SAMPLING DATA FOR NON-LONGWALL OPERATIONS IN UNDERGROUND COAL MINES, BY SELECTED OCCUPATIONS—Continued

Occupation	Number of Samples	Mean mg/m³	Median mg/m³	Pct. > Standard *	Avg. deviation mg/m³
Utility Man	775	0.63	0.51	5	−0.79
Total	37,743	0.75	0.59	9	−0.68

* 1.5 mg/m³ or a reduced standard below 1.5 mg/m³.
** Occupations with fewer than 100 samples.
Source: Tabulation of MSHA MSIS Data.

The highest mean, median exposures, the greatest percentage of samples exceeding the applicable standard, and the smallest average deviation below the applicable standard were for the cutting machine and continuous mining machine operators. These data are consistent with NIOSH's findings that the greatest source of respirable dust at continuous mining operations is the continuous mining machine. NIOSH's Best Practices states that, at most continuous mining operations, the DO is the continuous mining machine operator and that dust generated by the continuous mining machine has the potential to expose the continuous mining machine operator and anyone working downwind of the active mining. (NIOSH IC 9517, 2010, p. 41.)

In the PREA, MSHA stated that dust levels at non-longwall operations could be controlled using currently available engineering controls, implementing well-designed face ventilation systems and controls, and following good maintenance and work practices. This is consistent with NIOSH's Best Practices, which states that ventilating air to a continuous mining section, whether blowing or exhausting, is the primary means of protecting workers from overexposure to respirable dust. In addition, proper application of water spray systems, ventilation, and mechanical equipment (scrubbers) provides the best overall means of respirable dust control. Also, the maintenance of scrubbers, water sprays, cutting bits and/or drill bits is basic to any effective dust control strategy and must be routinely practiced. Furthermore, suppression of dust is the most effective means of dust control. Suppression is achieved by the direct application of water to wet the coal before and as it is broken to prevent dust from becoming airborne.

Once dust is airborne, NIOSH states that other methods of control must be applied to dilute it, direct it away from workers, or remove it from the work environment. For example, redirection of dust is achieved by water sprays that move dust-laden air in a direction away from the operator and into the return entry or behind the return ventilation curtain. In addition, capture of dust is achieved either by water sprays that impact with the dust in the air to remove it or by mechanical means such as fan-powered dust collectors. Ventilating air dilutes and directs dust away from workers. Either blowing or exhausting ventilation is used on continuous mining sections. A cut sequence should be adopted so that cut-throughs are made from intake to returns when practical to prevent return air from blowing back over the operator. Handheld remote control of the continuous mining machine has made it possible for operators to stay outby the continuous mining machine while operating the machine; however, operator positioning is crucial depending on the ventilation system being used. The velocity and quantity of face ventilating air are important factors for controlling respirable dust exposure of the continuous mining machine operator. A good ventilation plan consists of sufficient mean entry air velocity to confine dust near the face and/or direct it toward the return entry with a high enough quantity of air for diluting generated respirable dust. (NIOSH IC 9517, 2010, pp. 41, 48, 54.)

Roof bolting machines are another source of dust at non-longwall underground coal mine operations. Most roof bolting machines are equipped with MSHA-approved dry dust collection systems to remove dust during drilling. However, roof bolting machine operators can be overexposed to dust from drilling, cleaning the dust collector, not maintaining the dust collector, or working downwind of the continuous mining machine. According to NIOSH, the largest source of operator dust exposure can occur from working downwind of the continuous mining machine. NIOSH states that if the dry dust collector is properly maintained and if the roof bolting machine is not working downwind of the continuous mining machine, very little dust should be measured in the roof bolting machine operator's work environment.

According to NIOSH, there are three major roof bolting respirable dust problem areas: (1) Filter leaking or plugging, (2) accumulation of dust in the collection system, and (3) low airflow at the bit due to hose, fitting, and relief valve leaks. NIOSH's best practices can help reduce dust exposure to the roof bolting machine operator by maintaining the dust collector system, cleaning the dust box, using dust collector bags, routing miner-generated dust to the return, and not working downwind of the continuous mining machine. (NIOSH IC 9517, 2010, p. 57).

Some commenters stated that MSHA's technological feasibility assessment of the proposed rule did not take into consideration that mine operators had optimized the dust controls in their operations to achieve compliance with the current 2.0 mg/m³ standard. These commenters further stated that there is no new technology that will allow mine operators to generally comply with the proposed 1.0 mg/m³ standard.

Under its existing dust standards, MSHA has found numerous instances involving mine operators using dust control technologies that were not in proper working order. For example, ventilation at the face is sometimes insufficient because of lost air due to inadequate or missing line curtains and stoppings. In addition, water sprays are sometimes inadequate because of insufficient pressure or improper or clogged nozzles. MSHA has also found scrubbers not properly maintained with clean filters or miners not being positioned in fresh air.

MSHA has also found numerous instances involving mine operators using dust control technologies together with improper work practices. The following information from NIOSH's Best Practices shows how work practices (e.g., miner and equipment positioning, and maintenance) can reduce a miner's exposure to respirable coal mine dust.

The velocity and quantity of face ventilating air are important factors for controlling respirable dust exposure of the continuous mining machine

operator. When blowing ventilation is used, the continuous mining machine operator should be positioned in the clean discharge air at the end of the blowing curtain or tubing with intake air sweeping from behind. The continuous mining machine operator should not proceed past the end of the line curtain. If the continuous mining machine operator must be on the return side of the curtain, some of the intake air should be bled over the line brattice to provide fresh air to the continuous mining machine operator. In addition, scrubber discharge must be on the opposite side of the line brattice to allow scrubber exhaust to discharge directly into return air. The air quantity provided at the end of the line curtain should be limited to 1,000 cfm over the scrubber capacity. Air quantities exceeding 1,000 cfm over the scrubber capacity can overpower the scrubber and push dust-laden air past the scrubber inlets. (NIOSH IC 9517, 2010, pp. 54–55.) MSHA has found miners working in the return air with scrubber exhaust not discharging directly into the return air and air quantities exceeding 1,000 cfm over the scrubber capacity.

When exhausting ventilation is used, intake air is delivered to the face in the working entry. The clean air sweeps the face, and the dust-laden air is then drawn behind the return curtain or through the exhaust tubing to the return entries. This type of system will keep mobile equipment in fresh air. It affords the continuous mining machine operator more freedom of movement than a blowing ventilation system. In addition, it allows more visibility around the loading area so that shuttle car operators can easily determine where the continuous mining machine operator is located when entering the face area.

Another advantage of exhausting ventilation is that shuttle car operators are always positioned in fresh air. The end of the ventilation curtain or tubing must be kept within 10 feet of the face when not using a scrubber to ensure that air reaches and effectively sweeps the face. The continuous mining machine operator should not proceed inby the end of the line curtain since this will expose the operator to dust-laden return air. If continuous mining machine operator dust levels are too high, the first thing to check is whether the operator is standing parallel to or outby the end of the line curtain. Scrubber exhaust must be on the same side of the entry as the line curtain to allow scrubber exhaust to discharge directly into return air. (NIOSH IC 9517, 2010, pp. 55–56.) MSHA has found instances of the exhaust curtain or tubing farther than 10 feet from the face when not using a scrubber, continuous mining machine operators standing parallel to or outby the end of the line curtain, and scrubber exhaust being recirculated rather than being discharged into the return air.

Bit type and bit wear can adversely affect respirable dust concentrations. Routine inspection of bits and replacement of dull, broken, or missing bits improve cutting efficiency and help minimize dust generation. (NIOSH IC 9517, 2010, p. 52.)

High-pressure sprays are recommended for redirecting of dust. However, care must be taken when determining location and direction because high pressure can cause turbulence, leading to rollback of dust laden air. Operators should examine, clean, or replace sprays if necessary before each cut. (NIOSH IC 9517, 2010, p. 47.) MSHA has found instances where water sprays different from those specified in the approved mine ventilation plan were being used and where some of the sprays were not operating properly.

Scrubbers lose as much as one-third of their airflow after just one cut. The most common cause of efficiency loss is filter panel clogging. Pitot tubes should be used to obtain air velocity readings as a measure of scrubber performance. When the dust is excessive, cleaning of the filter panel, the demister, and the scrubber ductwork, is required more often. Also, the spray nozzles in the ductwork should be checked to ensure they are completely wetting the entire filter panel and not just the center. In some mines, filters should be cleaned with water at least after each place change. In addition, inlets and ductwork may require more frequent cleaning. (NIOSH IC 9517, 2010, pp. 49–51.) MSHA has found instances where scrubbers were operating with clogged filters. MSHA has also found that some operators use less efficient filters. A less efficient filter traps fewer dust particles, but is used by some mine operators because it requires less frequent maintenance than an efficient filter which traps more dust.

In addition to dust created by the roof bolting machine itself, roof bolting machine operators can be exposed to continuous mining machine-created dust when bolting is required downwind of the continuous mining machine. According to NIOSH, regardless of the type of ventilation being used, the cutting sequence must be designed to limit the amount of time the roof bolting machine operator works downwind of the continuous mining machine. Properly sequenced cuts with double-split ventilation can eliminate the need to work downwind of dust concentrations created by the continuous mining machine. (NIOSH IC 9517, 2010, pp. 59–60.)

Because MSHA has found numerous instances involving mine operators using dust control technologies that were not in proper working order and improper work practices, both of which have contributed to miners' exposure to respirable coal mine dust in excess of the existing permissible levels, it is reasonable to conclude that mine operators have not optimized all existing dust controls. MSHA concludes that it is technologically feasible for mine operators to meet the 1.5 mg/m^3 standard for non-longwall underground coal mining operations using existing engineering controls along with proper work practices on each shift.

e. Underground Coal Mining Longwall Operations

Longwall coal mining operations generally have the highest respirable coal mine dust levels. In the PREA, MSHA stated that, in rare instances, some operators may encounter implementation issues as they attempt to comply with the proposed dust standards. Under the final rule, implementation issues are greatly reduced for longwall operators.

Table IV–5 presents a summary of the adjusted 2008–2009 sampling data for longwall operations in underground coal mines by selected occupations. Of the more than 2,000 samples taken by MSHA inspectors during 2008 and 2009, after adjustment, approximately 21% exceeded the standard and the average deviation was 0.39 mg/m^3 below the standard. The mean and median of the samples were 1.09 mg/m^3 and 0.98 mg/m^3, respectively. These data indicate that, after adjustment, typical dust levels at longwall operations are below the 1.5 mg/m^3 standard. The longwall operator on the tailgate side is the only occupation/location where more than 30 percent of the adjusted samples exceeded the standard.

TABLE IV–5—SUMMARY OF ADJUSTED 2008–2009 SAMPLING DATA FOR LONGWALL OPERATIONS IN UNDERGROUND COAL MINES, BY SELECTED OCCUPATIONS

Occupation	Number of samples	Mean mg/m³	Median mg/m³	Pct. > standard *	Avg. deviation mg/m³
Headgate Operator	352	0.74	0.60	8	−0.74
Jack Setter (Longwall)	726	1.16	1.04	22	−0.32
Longwall Operator (Headgate Side)	337	1.20	1.11	24	−0.27
Longwall Operator (Tailgate Side)	371	1.39	1.22	35	−0.09
Other **	253	0.76	0.58	11	−0.71
Total	2,039	1.09	0.98	21	−0.39

* 1.5 mg/m³ or a reduced standard below 1.5 mg/m³.
** Occupations with fewer than 100 samples.
Source: Tabulation of MSHA MSIS Data.

As MSHA stated in the PREA, existing technologies are available to reduce dust levels in longwall operations. Ventilation is the most effective control. The amount of ventilation reaching the face can be increased by better maintenance and positioning of the line curtains and stoppings, increasing the amount of air delivered to the longwall face, and reducing the restrictions in the intake entries. Under some circumstances, mine operators may have to develop additional airways. In addition, efficient and better positioned water spray nozzles as well as increased water pressure and volume can be used. Work practices, such as proper positioning of the miner as well as the cleaning and maintenance of the dust controls further reduce dust levels. The use of CPDMs will enable operators to ascertain the effects of these practices and how to combine their use most effectively.

NIOSH noted many areas where improvements could be made to reduce current dust levels in longwall operations. These areas include: (1) Reducing dust in the intake air entries by decreasing air velocities in the intake entries; (2) controlling dust generated by the shearer by ensuring sufficient wetting of the coal; (3) maintaining the cutting drum bits by promptly replacing damaged, worn, or missing bits; (4) controlling dust generated by the stageloader/crusher by fully enclosing the stageloader/crusher, wetting the coal in the stageloader and crusher area, and using scrubber technology to create negative pressure; (5) using a high-pressure water-powered scrubber; and (6) installing and maintaining gob curtains. (NIOSH IC 9517, 2010, pp. 17–26.)

Some commenters stated that, like non-longwall operations, dust controls for longwall operations have been optimized and there were no additional controls available to further reduce coal mine dust levels. In response to these comments, MSHA notes that the Agency has found that improvements have been made in respirable dust control at longwall operations since the 1990s. According to NIOSH, approximately 25% of the active longwall faces in the United States were surveyed to quantify dust generation from major sources and determine the relative effectiveness of the different control technologies. NIOSH found that the average face velocities increased by 28% (0.71 m/sec or 140 ft/min) when compared to air velocities reported in a mid-1990s longwall study. NIOSH also found that water to the shearer increased in an effort to control dust liberated from the face. Headgate splitter arm directional spray systems were observed on 90% of the surveyed longwalls. The exact type, number and location of these sprays varied significantly between mines, but all were operating on the principle of splitting the ventilating air as it reaches the headgate side of the shearer and holding the dust-laden air near the face. (Rider et al., 2011, pp. 2–3.) NIOSH stated that although average shift production rates rose approximately 53%, dramatic reductions in average dust levels, between 20% and 58%, were realized at each face sampling location when dust levels were compared to a 1990s study. (Rider et al., 2011, p. 7.)

However, despite these improvements, like non-longwall operations, MSHA has found that there are numerous instances involving mine operators using dust control technologies that were not in proper working order and using improper work practices, both of which have contributed to miners' exposure to excessive respirable coal mine dust. For example, MSHA has found instances where air being directed into the mine is lost before it reaches the face due to inadequate curtains and stoppings, miners were improperly positioned in the return air, and inadequate maintenance resulted in excessive dust levels.

NIOSH has also found instances involving mine operators using dust control technologies that were not in proper working order or improper work practices, both of which have contributed to miners' exposure to excessive respirable coal mine dust. NIOSH observed: (1) Longwall operations with improperly maintained brattice curtain behind the hydraulic support legs resulting in large voids with air escaping into the gob; (2) shearer operators located inby, rather than outby, the headgate drum exposed to elevated dust levels when the headgate drum cut into the headgate entry; and (3) an improperly angled hydraulically adjustable splitter arm allowed dust to migrate over the top of the splitter arm and into the walkway. (NIOSH IC 9517, 2010, pp. 23–24, 30.)

In addition, NIOSH notes that unidirectional cutting may allow for greater flexibility to place workers upstream of the dust sources than bidirectional cutting. Depending on roof conditions, this may allow the operators to modify the cut sequence so that shields are only advanced downwind of the shearer. Activating shield advance as close to the tailgate drum as possible and keeping jack setters upwind of the advancing shields may protect the jack setters from elevated dust levels by keeping them in a clean air envelope created by the shearer's directional spray system. (NIOSH IC 9517, 2010, p. 34.)

Based on MSHA's experience with and NIOSH's analysis of dust control techniques, MSHA concludes that it is technologically feasible for mine operators to meet the 1.5 mg/m³ standard for longwall underground coal mining operations using existing engineering controls along with proper work practices on each shift.

f. Underground Coal Mining in the Presence of Silica

Some commenters expressed concern about the feasibility of meeting reduced

dust standards due to the presence of silica. The available dust controls discussed previously are effective in reducing the amount of respirable coal mine dust, including silica, in the mine atmosphere. In addition, NIOSH recommends that if roof rock must be cut, it is often beneficial to cut the coal beneath the rock first and then back the continuous mining machine up to cut the remaining rock. This method of cutting leaves the rock in place until it can be cut out to a free, unconfined space, which creates less respirable dust (especially silica dust). (NIOSH IC 9517, 2010, p. 53.) NIOSH also notes that if the continuous mining machine operator works downwind of the roof bolting machine, as much as 25% of the continuous mining machine operator's quartz dust exposure can be attributed to dust from the bolting operation. NIOSH notes that the problem is usually a lack of maintenance of the dust controls on the roof bolting machine. (NIOSH IC 9517, 2010, p. 60.)

4. Economic Feasibility of Complying with the Final Rule

MSHA has traditionally used a revenue screening test—whether the yearly costs of a rule are less than 1 percent of revenues, or are negative (i.e., provide net cost savings)—to establish presumptively that compliance with the regulation is economically feasible for the mining industry. Recent Census Bureau data show that mining in general has operating profits greater than 17 percent of sales and corresponding after tax profits of approximately 10 percent.[58] The Agency believes that with these average profit levels, when the cost of a regulation has less than a 1 percent impact on the affected industry's revenues, it is generally appropriate to conclude that the regulation is feasible.

In estimating costs of a rule, it is important to distinguish between compliance costs (costs that the affected industry incur to comply with the rule) and transfer payments. As a result of additional citations that MSHA estimates will be issued under the final rule, operators will incur penalty payments. Penalty payments are considered transfer payments from the affected party to the Federal government resulting from violations of the final rule; transfer payments are not considered compliance costs. However, transfer payments are important for describing the distributional effects of a rule. Therefore, to determine whether the final rule is economically feasible, MSHA has included as total costs the estimated compliance costs and penalty payments.

Using the screening test noted above, MSHA has concluded that the requirements of the final rule are economically feasible. MSHA estimates that the annualized costs of the final rule, including transfer payments, to underground coal mine operators is $27.1 million ($26.2 million of compliance costs and $0.9 million of penalty payments), which is approximately 0.13 percent of total annual revenue of $20.2 billion ($27.1 million/$20.2 billion) for all underground coal mines.

MSHA estimates that annualized costs of the final rule, including transfer payments, to surface coal mine operators is $4.02 million ($4.0 million of compliance costs and $24,900 of penalty payments), which is approximately 0.02 percent of total annual revenue of $17.9 billion ($4.02 million/$17.9 billion) for all surface coal mines.

5. Conclusion

MSHA has concluded that the final rule is technologically feasible both in terms of sampling respirable dust concentrations with the CPDM and the availability of engineering controls to meet the respirable coal mine dust standards of 1.5 mg/m^3 and 0.5 mg/m^3 for intake air and part 90 miners. The CPDM is accurate, reliable, and ergonomically correct. In addition, current dust levels for most sampled occupations and locations were typically found to be below the applicable standards. Existing engineering controls including ventilation, water sprays and environmentally controlled cabs along with proper work practices can be used to further reduce dust levels. Mine operators are not maintaining optimal dust controls at all times. MSHA and NIOSH both have found instances where air being directed into the mine is lost before it reaches the face due to operators' failing to maintain ventilation controls with proper curtains and stoppings, miners are improperly positioned in the return air, and there is inadequate maintenance, all resulting in excessive dust levels. Correcting existing problems will allow mine operators to further reduce dust levels without having to make substantial additional expenditures in dust controls.

Since the compliance cost estimates for both underground and surface coal mines are below one percent of their estimated annual revenue, MSHA concludes that compliance with the provisions of the final rule will be economically feasible for the coal industry.

IV. Section-by-Section Analysis

A. 30 CFR Part 70—Mandatory Health Standards—Underground Coal Mines

1. Section 70.1 Scope

Final § 70.1, like the proposal, states that part 70 sets forth mandatory health standards for each underground coal mine subject to the Federal Mine Safety and Health Act of 1977, as amended.

MSHA received several comments requesting that the Agency extend the scope of the rule to various facilities, contractors, and contract employees. The final rule, like existing § 70.1, applies to all underground coal mine operators and protects the health of all miners working in underground coal mines.

2. Section 70.2 Definitions

The final rule does not include the proposed definitions for *Weekly Accumulated Exposure* and *Weekly Permissible Accumulated Exposure* that would have applied when operators use a CPDM to collect respirable dust samples under proposed part 70. These two definitions are not needed since the proposed weekly sampling requirements are not included in the final rule.

Act

The final rule, like the proposal, defines Act as the Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164 and Public Law 109–236.

Active Workings

Final § 70.2, like the proposal, makes no change to the existing definition of active workings.

Approved Sampling Device

The final rule, like the proposal, defines an *approved sampling device* as a sampling device approved by the Secretary and Secretary of Health and Human Services (HHS) under part 74 of this title. Whenever a sampling device is used by operators to comply with the requirements of part 70, the device must be approved for use in coal mines under part 74 (Coal Mine Dust Sampling Devices). MSHA did not receive any comments on the proposed definition and the definition is finalized as proposed.

Certified Person

Final § 70.2 makes nonsubstantive changes to the existing definition of certified person. It does not include the

[58] Most recent Census Bureau data can be found at *http://www2.census.gov/econ/qfr/current/mmw1.xls* on the line for Mining.

parenthetical text following the references to §§ 70.202 and 70.203.

Coal Mine Dust Personal Sampler Unit (CMDPSU)

The final rule, like the proposal, defines a coal mine dust personal sampler unit (CMPDSU) as a personal sampling device approved under 30 CFR part 74, subpart B. This definition is included to distinguish between the two types of coal mine dust monitoring technology approved under part 74 and to clarify the applicability of the final rule to each approved sampling device. The existing gravimetric sampling device used by operators is a CMDPSU. MSHA did not receive any comments on the proposed definition and the definition is finalized as proposed.

Concentration

Final § 70.2, like the proposal, makes no change to the existing definition of concentration.

Continuous Personal Dust Monitor (CPDM)

The final rule, like the proposal, defines a *continuous personal dust monitor* as a personal sampling device approved under 30 CFR part 74, subpart C. This definition is included to distinguish between the two types of coal mine dust monitoring technology approved under part 74 and to clarify the applicability of the final rule to each approved sampling device. MSHA did not receive any comments on the proposed definition and the definition is finalized as proposed.

Designated Area (DA)

The final rule is similar to the proposal. It defines *designated area* (DA) as a specific location in the mine identified by the operator in the mine ventilation plan under § 75.371(t) of this title where samples will be collected to measure respirable dust generation sources in active workings; approved by the District Manager; and assigned a four-digit identification number by MSHA. The proposal would have defined the DA as an area of a mine identified by the operator in the mine ventilation plan. The final definition includes a specific reference to § 75.371(t). This is consistent with the existing definition. In addition, like the proposal, the definition includes language from existing § 70.208(e) regarding how DAs are denoted. MSHA did not receive any comments on the proposed definition.

Designated Occupation

Final § 70.2 includes a nonsubstantive change to the existing definition of designated occupation. It includes the abbreviation MMU for mechanized mining unit.

District Manager

Final § 70.2, like the proposal, makes no change to the existing definition of District Manager.

Equivalent Concentration

The final rule is changed from the proposal. Under the final rule, equivalent concentration is defined as the concentration of respirable coal mine dust, including quartz, expressed in milligrams per cubic meter of air (mg/m^3) as measured with an approved sampling device, determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter (sampling time in minutes (t) times the sampling airflow rate in cubic meters per minute), and then converting that concentration to an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by multiplying the concentration of respirable coal mine dust by the constant factor prescribed by the Secretary.

(2) The CPDM, the device shall be programmed to automatically report end-of-shift concentration measurements as MRE-equivalent concentrations.

Like the proposal, the introductory paragraph in the definition under the final rule provides that dust concentration measurements from an approved sampling device will be converted to MRE-equivalent concentrations. Unlike the proposal, the final rule includes quartz in the definition as that is also an adjusted MRE-equivalent concentration. Also, the final definition, unlike the proposal, does not adjust the MRE-equivalent concentration for shifts longer or shorter than 8 hours to an 8-hour equivalent concentration.

Final paragraph (1), like the proposal, applies when the approved sampling device is the CMDPSU and is derived from existing § 70.206 which describes converting a concentration of respirable dust as measured with the CMDPSU. For the CMDPSU, the constant factor is 1.38. This compensates for the difference in the dust collection characteristics and makes the measurements equivalent to what would be obtained using an MRE instrument.

Final paragraph (2) of the definition applies when the approved sampling device is the CPDM. It states that when using the CPDM, the device must be programmed to automatically report end-of-shift concentration measurements as MRE-equivalent concentrations.

The manufacturer's programming will use the constant factor determined by the Secretary for HHS specific to this approved sampling device to provide an MRE-equivalent concentration.

MSHA acknowledges that working conditions for miners have changed in recent decades with the result that miners, on average, work longer hours over the course of a shift, week, year and/or lifetime. In an attempt to address the additional exposure that comes from such a change in working conditions, the proposal would have required the respirable coal mine dust sample results to be expressed in terms of an 8-hour equivalent concentration for shifts longer than 8 hours, regardless of how many hours the miners worked over the course of a week, a month, or a lifetime to capture the effect of longer shifts. In addition, MSHA requested comment on the recommendation in the 1995 NIOSH Criteria Document to lower exposure to 1.0 mg/m^3 for up to a 10-hour work shift over a 40-hour workweek.

Some commenters stated that the effect of the 8-hour conversion would be that, for miners working the same number of hours per week, miners who worked 8 hours could be exposed to more respirable dust than miners who worked longer shifts. One commenter pointed out that, for the same 40-hour week, a miner working five 8-hour shifts could be exposed to more dust than a miner working four 10-hour shifts. Some of the commenters expressed concern that the 8-hour conversion, when applied to shift lengths of 10 or 12 hours, would result in concentration limits well below the 8-hour concentration limit. They stated that this would force them to reduce the lengths of their shifts in order to comply with the limit, decreasing the efficiency of their mines. Another commenter stated that the 8-hour conversion formula was too complicated and confusing for miners who work extended shifts and that miners would not be able to figure out their exposure limits. The commenter stated that they appreciated the Agency taking into account the fact that most miners work more than an 8-hour shift, but urged MSHA to adopt a simplified approach.

MSHA reviewed its data on shift length and hours worked. The data show that the majority of miners currently work longer than 40 hours per

week, whether they are working 8-hour shifts or longer shifts. The data also show that some miners are working 8-hour shifts 6 days per week, while some miners are working 10-hour shifts 4 or 5 days per week.

MSHA also reviewed the available data on health outcomes as a function of the respirable dust dose over a single shift. As stated above in the discussion regarding the QRA, the data show disease causation with long-term exposures. As noted in NIOSH's CIB, ''although no epidemiologic data exists that implicate longer hours as a contributory causative factor for CWP, working longer hours leads to the inhalation of more dust into the lungs.'' However, as stated above, shift length cannot predict the number of hours miners are exposed to respirable coal mine dust in the long-term. While it is possible that shift length could contribute to disease, the available evidence is insufficient to support a linkage at this time. As such, MSHA believes that the link between longer shifts and resulting disease requires further examination and study. MSHA did not receive comments to support this linkage.

After consideration of the relevant data and in response to comments, MSHA believes a concentration limit, with sampling performed for a full shift, is the most appropriate approach to account for the longer total exposure to which miners now on average are exposed. MSHA believes that this approach, which captures increased exposures regardless of shift length, accomplishes some of the purpose of the 8-hour equivalent concentration. Accordingly, MSHA has not included the conversion to an 8-hour concentration in the final ''equivalent concentration'' definition. By not including the 8-hour conversion in the final rule, MSHA is preserving the status quo. However, the final rule requires operators to sample during the entire shift that a miner works and is exposed to respirable coal mine dust, even if the shift exceeds 8 hours. Full-shift sampling will provide additional health protection over and above what is currently provided for miners who work longer than 8-hour shifts.

In the future, MSHA intends to evaluate samples taken on shifts longer than 8 hours, additional studies, data, literature, and any other relevant information to determine whether an 8-hour equivalent concentration is necessary to protect miners who work longer shifts.

Mechanized Mining Unit (MMU)

The final definition of a mechanized mining unit (MMU) is clarified from the proposal. It is defined as a unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which uses mining equipment other than specified in § 70.206(b) or in § 70.208(b) of this part. It further provides that each MMU will be assigned a four-digit identification number by MSHA, which is retained by the MMU regardless of where the unit relocates within the mine. It also provides that when:

(1) Two sets of mining equipment are used in a series of working places within the same working section and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment shall be identified as a single MMU.

(2) Two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of mining equipment shall be identified as a separate MMU.

Several commenters stated that the proposed definition was confusing and unclear or that it conflicted with the requirements of proposed § 75.332 pertaining to working sections and working places. In response to these comments, the final definition includes several clarifications. The definition includes references to final § 70.206(b) concerning bimonthly sampling and § 70.208(b) concerning quarterly sampling to clarify when a specialized unit is an MMU, i.e., when directed by the District Manager in accordance with §§ 70.206(b) or 70.208(b). The proposed definition included a reference to § 70.207(b), which is redesignated in the final rule.

The definition also includes the statement that the four-digit identification number is retained by the MMU ''regardless of where the unit relocates in the mine.'' This language is similar to the existing sampling requirements for MMUs under § 70.207(f)(1), which contains identical language.

Paragraphs (1) and (2) further clarifies that two sets of equipment will be identified as a single MMU when only one production crew is employed ''at any given time on either set of mining equipment'' or when two sets of mining equipment are ''simultaneously engaged in cutting, mining, or loading coal or rock from working places.'' Paragraphs (1) and (2) are similar to the existing sampling requirements for MMUs under § 70.207(f)(2), which contains similar language.

MRE Instrument

Final § 70.2, like the proposal, makes no change to the existing definition of MRE instrument.

MSHA

Final § 70.2, like the proposal, makes no change to the existing definition of MSHA.

Normal Production Shift

The final rule is changed from the proposal. It defines *normal production shift* as a production shift during which the amount of material produced by an MMU is at least equal to 80 percent of the average production recorded by the operator for (1) the most recent 30 production shifts or (2) for all production shifts if fewer than 30 shifts of production data are available.

The proposal would have defined normal production shift as the amount of material produced by an MMU that is at least equal to the average production recorded by the operator for the most recent 30 production shifts or for all production shifts if fewer than 30 shifts of production data are available.

Several commenters supported the proposed definition, agreeing that exposure monitoring should be conducted during shifts that represent typical production levels. One commenter added that the proposed definition would fix a loophole that permits operators to sample for compliance with the respirable dust standard when production is very low. The commenter added that sampling under the proposed definition would result in a better understanding of the exposures occurring under normal operating conditions.

Other commenters expressed a variety of concerns, most related to the variability of production and feasibility of reaching the minimum production level contained in the proposal. They indicated that the proposed production level was too high and, as a result, more operator samples would be considered invalid and voided, and more sampling would be needed. Some of these commenters noted that dynamic factors such as equipment breakdowns or variable mining conditions could cause fluctuations in production, resulting in the sampled shifts not meeting the proposed definition. One commenter stated that the number of needed samples would probably double as a result of the averaging period and the required tonnage. Another commenter stated that 50 percent of the company's production shifts would not meet the

proposed definition. This same commenter recommended that ''normal production shift'' be defined as 80 percent of the prior 30-shift average production, while another commenter suggested that MSHA should consider using 75 percent of the prior 30 days' average to reduce the number of invalid samples.

MSHA has considered all comments received and the concerns expressed regarding the feasibility of reaching the proposed minimum production level. In response, MSHA has changed the production level in the final *normal production shift* definition to 80 percent. The purpose for defining normal production shift is to achieve reliable measurements of miners' day-to-day exposures to respirable coal mine dust that occur during production under normal mining conditions. It is important for miner health and safety that operator sampling occur during shifts that represent typical production and mining conditions on the MMU. The level of coal production has a significant impact on dust generation. As production increases, the amount of generated respirable coal mine dust also increases. Samples that are collected on shifts when production is much less than what generally occurs cannot reflect typical dust concentration levels to which miners are exposed or normal mining activity on the MMU. Such measurements underestimate miners' typical dust exposures. Under the existing definition, operators are required to sample when production is at least 50 percent of the average production reported during the operator's last sampling period (i.e., last set of five valid samples). The existing 50 percent production level is not representative of typical dust concentration levels under normal mining conditions.

The Dust Advisory Committee recommended that respirable dust samples be taken when production is sufficiently close to normal production, which it stated should be defined as 90 percent of the average production of the last 30 production shifts.

In its 1995 Criteria Document, NIOSH recommended that, consistent with standard industrial hygiene practice (which requires exposure measurements be collected during typical work shifts), for a production shift to be considered a ''normal production shift,'' it must produce at least 80 percent of the average production over the last 30 production shifts. NIOSH further stated that a production-level threshold should ensure that exposure conditions are comparable between sampled and unsampled shifts.

The final 80 percent production level responds to commenters' concerns, is the same as the recommendation in the 1995 NIOSH Criteria Document, and is consistent with the 1996 Dust Advisory Committee Report. It is also consistent with MSHA's longstanding practice that MSHA inspectors' respirable dust samples be collected when production is at least 80 percent of the average of the previous 30 production shifts. The 80 percent production level under the final definition reflects typical conditions under which miners work, particularly in combination with the final rule's requirement that operators sample miners during the entire time that miners work, which is discussed elsewhere in the preamble related to § 70.201(c). The final definition is more protective of miners than the existing definition.

Like the existing operator sampling program, if a ''normal production shift'' is not achieved, MSHA may void the sample collected during that shift. MSHA recognizes that under the final rule, the total number of required operator samples to be collected on the MMU will increase from that required under the existing standards. However, as discussed elsewhere in the preamble related to § 70.206(d), a valid equivalent concentration measurement that exceeds the standard by at least 0.1 mg/m^3, even when production is lower than the 80 percent threshold, will be used to determine the equivalent concentration for that MMU.

Under existing practice, if an operator encounters unique mining conditions that reduce production, such as when the coal seam narrows due to a rock intrusion running through the coal bed, MSHA allows the operator to submit any relevant information to the District Manager so that average production levels can be adjusted to ensure samples are considered valid in that they represent current, normal mining conditions. This practice provides sufficient flexibility to account for unique fluctuations in the mining process. Under the final rule, MSHA will continue this practice.

Like the proposal, the final rule retains the proposed time period, that is, the most recent 30 production shifts, in determining whether a production shift is considered a *normal production shift.*

During the comment period, MSHA requested comment from the mining community on whether the average of the most recent 30 production shifts would be representative of dust levels to which miners are typically exposed. This request was made in the preamble to the proposed rule, the Agency's opening statements at the public hearings, and a **Federal Register** notice (76 FR 12649, March 8, 2011). MSHA did not receive any comments on this proposal.

MSHA considers the time frame in the existing definition, which requires samples to be collected for the ''last 5 valid samples,'' to be inadequate and not a representative period that reflects typical production. MSHA's existing practice for inspector sampling is to use 30 production shifts as a time period for establishing typical production. Based on agency experience and as stated in the proposed rule, using 30 production shifts provides sufficient historical data to give a reliable representation of an MMU's typical production. Averaging production over the 30 production shifts, instead of the last 5 valid samples, accounts for any fluctuations in mining cycles, including those in which production is higher than usual. In addition, both the 1995 NIOSH Criteria Document and 1996 Dust Advisory Committee Report recommended that the last 30 production shifts be used as the benchmark to gauge production levels.

Also, the final definition, like the proposal, requires that when an MMU has operated for fewer than 30 production shifts, the average production of all production shifts would be considered to determine a ''normal production shift.'' MSHA did not receive comments on this proposed provision and it is finalized as proposed. MSHA believes it is essential to use records from all of an MMU's production shifts when it has operated for fewer than 30 shifts because this would result in the most reliable determination of the MMU's production and a miner's exposure.

One commenter who did not support the proposed definition expressed concern that operators would have to track more production shifts in order to meet the required production level. Comments on the production records required to be made to establish a ''normal production shift'' are discussed elsewhere in the preamble related to final § 70.201(g).

Finally, some commenters suggested that the definition of ''normal production shift'' could be eliminated by using personal samples to measure miner's actual exposure since it would not matter what the production was during the sampling period. Comments on personal sampling are discussed elsewhere in the preamble related to final § 70.201.

Other Designated Occupation (ODO)

The final rule includes nonsubstantive changes from the

proposal. It defines other designated occupation (ODO) as an occupation on a mechanized mining unit (MMU) that is designated for sampling required by part 70 in addition to the DO. It further provides that each ODO will be identified by a four-digit identification number assigned by MSHA.

MSHA received one comment related to the proposed definition. The commenter requested that MSHA consider personal sampling of miners in lieu of sampling the ODOs. MSHA has addressed this comment elsewhere in the preamble under final § 70.201. The final rule, consistent with the Mine Act, requires environmental sampling to accomplish the objective of controlling respirable dust to protect the health of miners. The definition of ODO is finalized as proposed.

Production Shift

Final § 70.2 includes nonsubstantive changes to the existing definition of production shift. It includes the abbreviations MMU for mechanized mining unit and DA for designated areas.

Quartz

The final rule is changed from the proposal. It retains the existing definition of quartz, which is defined as crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure.

The proposal would have defined *quartz* to mean crystalline silicon dioxide (SiO_2) as measured by: (1) MSHA Analytical Method P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust; or (2) Any method approved by MSHA as providing a measurement of quartz equivalent to that obtained by MSHA Analytical Method P–7.

MSHA received one comment on the proposed definition. The commenter expressed concern regarding notice of any analytical measurement method that MSHA could approve as equivalent to Analytical Method P–7. In response, MSHA has concluded that a change in the proposed definition is not necessary because the existing Analytical Method P–7 used in determining the amount of quartz in respirable coal mine dust (U.S. Department of Labor, MSHA, 2011) is sufficient.

Representative Sample

The final rule defines representative sample as a respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels and (1) with regard to an MMU, normal mining activities in the active workings during which the amount of material produced is equivalent to a normal production shift; or (2) with regard to a DA, when material is produced and routine day-to-day activities are occurring.

The proposed rule would have defined ''representative sample'' as a respirable dust sample that reflects typical dust concentration levels and normal mining activity in the active workings during which the amount of material produced is equivalent to a normal production shift. The final definition differs from the proposed definition in two ways. First, the final definition adds the language, ''expressed as an equivalent concentration'' to clarify that each respirable dust sample measurement must be converted to an MRE-equivalent concentration as defined under this final § 70.2. Second, similar to the existing definition of ''production shift'' in § 70.2, the final definition distinguishes between a representative sample for an MMU and a representative sample for a DA. To avoid confusion and to distinguish a representative sample on an MMU from one in the DA, the final definition clarifies that, for a DA, the representative sample is based on a shift during which material is produced and routine day-to-day activities are occurring in the DA. The definition for a DA is the same as the existing definition which does not take into account the amount of material produced.

MSHA received one comment related to the proposed definition. The commenter stated that there was no need to define representative samples and that MSHA should modify its sampling methodology such that personal samples, rather than occupational samples, are taken.

With respect to the commenter's recommendation that MSHA replace the occupational sampling methodology with personal sampling, MSHA addresses this comment elsewhere in the preamble under final § 70.201. In addition, the definition for representative sample ensures that respirable dust samples accurately reflect the amount of dust to which miners are exposed. Without a definition, operators could perform sampling at times that do not represent typical production which would under-represent, or bias, miners' dust exposures. Operator sampling must be conducted when miners are in positions and physical locations performing the same tasks that they perform on non-sampling days to constitute representative samples. To be considered a representative sample, operators should ensure that sampling occurs when mining activities, such as production methods, reflect that of non-sampling days (e.g., when approved cut sequences are followed, and the sequence of mining includes the turning of multiple crosscuts). The final definition of representative samples will provide protection for miners' health by allowing MSHA to accurately evaluate the functioning of operators' dust controls and the adequacy of operators' approved plans.

Respirable Dust

The final rule makes a nonsubstantive change to the existing definition of respirable dust. It defines respirable dust as dust collected with a sampling device approved by the Secretary and the Secretary of HHS in accordance with part 74 (Coal Mine Dust Sampling Devices) of this title. The final definition deletes from the existing definition, ''Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are continued in effect,'' because it is not needed. Approved sampling devices are approved by MSHA and NIOSH under 30 CFR part 74.

Secretary

The final rule makes a nonsubstantive change to the existing definition of Secretary. It defines Secretary as the Secretary of Labor or a delegate. It includes the gender neutral term ''a'' delegate rather than the existing term ''his'' delegate.

Valid Respirable Dust Sample

For clarification, the final rule revises the definition under existing § 70.2 for a *valid respirable dust sample* to mean a respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

The final definition adds language to clarify that for CPDM samples, the data files are ''electronically'' transmitted to MSHA, and not physically transmitted like samples collected with the CMDPSU. The proposed rule did not include this clarification.

3. Section 70.100 Respirable Dust Standards

Final § 70.100(a) is changed from the proposal. It requires that each operator continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed, as

measured with an approved sampling device and expressed in terms of an equivalent concentration, at or below: (1) 2.0 milligrams of respirable dust per cubic meter of air (mg/m^3); and (2) 1.5 mg/m^3 as of August 1, 2016.

Final paragraph (a)(1) is the same as proposed paragraph (a)(1). It retains the existing standard of 2.0 mg/m^3 on the effective date of this final rule. Final paragraph (a)(2) is redesignated from proposed paragraph (a)(3) and changes the date on which the 1.5 mg/m^3 standard is effective from the proposed 12 months to 24 months after the effective date of the final rule.

Unlike proposed paragraph (a)(2) and (a)(4), the final rule does not require that the standard be lowered to 1.7 mg/m^3 6 months after the effective date of the final rule, or to 1.0 mg/m^3 24 months after the effective date of the final rule.

MSHA proposed the 1.0 mg/m^3 standard in accordance with Section 101(a)(1) of the Mine Act, 30 U.S.C. 811(a)(1). Section 101(a)(1) of the Mine Act requires that the Secretary take certain action when a recommendation to issue a rule, accompanied by a Criteria Document, is received from NIOSH. The Secretary must refer the recommendation to an advisory committee, or publish the recommendation as a proposed rule, or publish in the **Federal Register** the determination and reasons not to do so.

In 1995, NIOSH published and submitted to MSHA a Criteria Document on *Occupational Exposure to Respirable Coal Mine Dust.* Consistent with Section 101(a)(1) of the Mine Act, the Secretary referred the NIOSH Criteria Document to an advisory committee (Dust Advisory Committee).

In the Criteria Document, NIOSH recommended that respirable dust exposures be limited to 1.0 mg/m^3 as a TWA concentration for up to 10 hours per day during a 40-hour work week as measured according to existing MSHA methods. This recommended exposure level (REL) was based on exposure-response studies of U.S. coal miners participating in the National Coal Workers' Health Surveillance Program (NCWHSP) and sampling data collected by the Bureau of Mines from 1969–1971 and MSHA from 1985–1988. NIOSH used an average concentration of 0.5 mg/m^3 of respirable dust in its disease risk estimates because, at that time, it constituted the lower range of the exposure data. NIOSH determined that extrapolations beyond the range of the existing exposure data would have carried considerable uncertainty. NIOSH found that, at a mean concentration of 0.5 mg/m^3, the excess risk of morbidity from progressive massive fibrosis at age 65 exceeded 1/1,000 for all durations of exposure and coal ranks evaluated, including 15 years of exposure to medium/low-rank coal, believed to be least toxic. NIOSH expected that long-term average dust concentrations would be below 0.5 mg/m^3 if miners' daily exposures were kept below the recommended exposure limit (REL) of 1.0 mg/m^3 (NIOSH 1995). NIOSH also recommended that the 1.0 mg/m^3 REL should apply to surface coal mines.

In 1996, the Dust Advisory Committee also recognized that overexposure to respirable coal mine dust remained a problem and recommended unanimously that MSHA consider lowering the allowable level of exposure to coal mine dust. The Committee reviewed MSHA monitoring data and scientific studies provided by NIOSH, including the NIOSH 1995 Criteria Document. The Committee concluded that

> there is substantial evidence that either a significant number of miners are currently being exposed to coal mine dust at levels well in excess of 2.0 mg/m^3 or that the current exposure limit for coal mine dust is insufficiently protective.

MSHA's QRA to the proposed rule used respirable dust exposure data collected from 2004 through 2008 and published quantitative studies on coal workers' morbidity from black lung (Attfield and Seixas, 1995), mortality from nonmalignant respiratory diseases (Attfield and Kuempel, 2008) and severe emphysema (Kuempel et al., 2009a) to estimate excess disease risks in U.S. miners. The QRA estimated disease risks after 45 years of single-shift occupational exposure at exposure levels under the existing standard. The QRA results indicated that, in every exposure category, exposure under the existing standards places miners at a significant risk of material impairment of health. In addition, MSHA found that average dust concentrations exceed the proposed respirable dust standard of 1.0 mg/m^3 at a number of work locations in every occupational category. The percentage of work locations that would exceed the proposed respirable dust standard of 1.0 mg/m^3 ranges from less than 1 percent for a few surface occupations to more than 70 percent for miners working on the longwall tailgate. The percentages are generally greater for underground occupations than for surface occupations. A statistically significant percentage of surface work locations (generally cleaning plant operations and surface drilling) have average dust concentrations exceeding the proposed exposure standard. For part 90 miners, the average dust concentration exceeds the proposed standard of 0.5 mg/m^3 at more than 20 percent of the work locations.

On March 8, 2011, MSHA issued a **Federal Register** notice (76 FR 12648) requesting comments on the proposed respirable dust concentration limits and requested alternatives. In addition, MSHA stated that the Agency received comments that some aspects of the proposed rule may not be feasible for particular mining applications and that MSHA is interested in comments.

MSHA received many comments on the proposed 1.0 mg/m^3 standard and the proposed phase-in periods of 24 months for the proposed 1.0 mg/m^3 standard and 12 months for the proposed 1.5 mg/m^3 standard. Many commenters supported the proposed 1.0 mg/m^3 standard. Other commenters suggested that MSHA, NIOSH, industry, and labor conduct a nationwide study using the CPDM to determine what dust concentrations are protective and achievable. MSHA intends to conduct a retrospective study that evaluates the 1.5 mg/m^3 respirable dust standard to determine if the standard should be further lowered to protect miners' health.

The final rule responds to commenters' concerns by establishing feasible dust standards and a uniform, longer 24-month implementation date for the final respirable coal mine dust standards. In addition, the final 1.5 mg/m^3 standard affirms MSHA's initial determination, set out in the proposal, that exposures at existing respirable dust levels are associated with coal workers' pneumoconiosis (CWP), chronic obstructive pulmonary disease (COPD) including severe emphysema, and death due to non-malignant respiratory disease (NMRD). All of these outcomes constitute material impairments to a miner's health or functional capacity. However, the final 1.5 mg/m^3 standard comports with MSHA's initial conclusion in the preamble to the proposed rule that some mine operators may encounter engineering control implementation issues as they attempt to comply with the proposed 1.0 mg/m^3 standard.

The final 1.5 mg/m^3 standard is projected to have a greater impact on risk for underground miners than for surface miners. Surveillance and exposure data have been collected on U.S. underground coal miners for over 40 years; there are few comparable studies on surface coal miners. The QRA to the final rule shows that surface work locations exceed the final 1.5 mg/m^3 standard on relatively few shifts and that the final 1.5 mg/m^3 standard is

projected to have relatively little impact for surface workers who are exposed to average concentrations below 0.5 mg/m³. However, the data also show that certain surface occupations are exposed to concentrations of respirable dust exceeding the final 1.5 mg/m³ standard. Table 28 of the QRA for the final rule contains more details on the projected reduction in the health risks for each occupational category.

The final 1.5 mg/m³ and 0.5 mg/m³ standards and single shift sampling evaluated in the QRA for the final rule, and other requirements of the final rule will reduce respirable dust levels for miners. These other requirements include: (1) Sampling for a full shift, (2) changing the definition of normal production shift, (3) requiring the use of CPDMs for sampling, (4) revising the sampling program, (5) requiring more timely corrective action on a single, full-shift operator sample, (6) changing the averaging method to determine compliance on operator samples, and (7) requiring records of on-shift examinations and corrective actions taken to assure compliance with the respirable dust control parameters. Collectively, MSHA expects these requirements will reduce respirable dust levels that miners face, further protect miners from the debilitating effects of occupational respiratory disease, and result in improvements that would be greater than those shown in Table 28.

MSHA will continue to examine closely the 1.5 mg/m³ standard. This will include evaluation of miners' exposure to respirable coal mine dust under exposure hours that are in excess of 8 hours per shift, changes to the definition of normal production shift, and while using a CPDM. MSHA intends to work closely with all segments of the mining community in its continuing assessment of the 1.5 mg/m³ standard to determine whether the final rule achieves MSHA's goals to lower and maintain respirable dust levels to protect miners' health.

MSHA gave serious consideration to establishing a 1.0 mg/m³ standard, as proposed, based on its determination that there is a significant risk to miners of material impairment of health when exposures meet or exceed the proposed standard. MSHA has concluded, however, that additional sampling and experience may be warranted for underground coal mines while other provisions of the final rule are in effect, including full-shift sampling, the revised definition of normal production shift, and use of the CPDM, and that comparable experience is warranted for surface coal mines, before considering a standard lower than 1.5 mg/m³.

MSHA's technological feasibility analysis of the 1.5 mg/m³ standard and comments on the technological feasibility of the proposed 1.0 mg/m³ standard are discussed elsewhere in this preamble under Section III.C., concerning the Technological Feasibility of Achieving the Required Dust Standards.

Some commenters stated that the proposed 1.0 mg/m³ standard is not based on the best available evidence but rather is based on faulty science and medical data. These comments and the underlying evidence, science, and medical data in support of the final 1.5 mg/m³ standard are addressed in Section III.A. of this preamble, concerning Health Effects.

Some commenters stated their calculations showed that, as opposed to fewer than 200 citations per year for violations of the current 2.0 mg/m³ standard, a 1.0 mg/m³ standard based on a single, full-shift measurement could result in more than 230,000 citations annually. In addition, some commenters stated that MSHA failed to consider that each violation would require abatement, a penalty, and mine plan amendments, and would likely result in mine interruptions until plan approvals can be obtained and abatement accomplished. Some commenters also stated that MSHA overestimated the number of citations for excessive dust that would be issued under the proposed rule. They anticipated that a citation would be issued for every sample that met or exceeded the ECV and for every sample that met or exceeded the WPAE (weekly permissible accumulated exposure). As clarified by MSHA at the final public hearing, it was never the Agency's intent to issue multiple citations for excessive dust on single samples taken for the same entity and also issue a citation when the WPAE was exceeded. Based on MSHA's evaluation of public comments and changes included in the final rule, MSHA has revised its projections for the number of citations that will be issued for excessive dust as a result of the final rule; these projections are discussed in Appendix A of the REA.

Regarding the proposed phase-in periods, some commenters stated that if black lung is a problem, then the Agency needs to act quickly. Other commenters stated that lowering the standard within these time periods was not achievable and asked for more time. The 24-month implementation date for the final 1.5 mg/m³ standard will allow the mining community the opportunity to identify and implement feasible engineering controls; train miners and mine management in new technology and control measures; and improve their overall dust control program. The Dust Advisory Committee unanimously recommended a phase-in period for any reduction to the existing standard. MSHA believes that 24 months will provide an appropriate amount of time for mine operators to feasibly come into compliance with the final respirable dust standard.

A few commenters stated that the results of respirable dust sampling suggest that the average dust concentration in many District 1 mines is under the proposed 1.0 mg/m³ standard. These commenters requested that anthracite mines be exempt from the final rule since overexposure to respirable dust above 1.0 mg/m³ is not a problem in these mines for various reasons: Low production, work shifts over 7 hours/day are not common, and the mines are very wet.

In response, MSHA's QRA for the final rule identifies NMRD mortality hazards not only for anthracite, but also for regions identified with high rank bituminous and low rank coal. Therefore, anthracite mines are not exempt from the dust standards in the final rule. Additional discussion on the health effects from exposure to respirable coal dust in anthracite mines is in Section III.B. of this preamble concerning the QRA.

Final § 70.100(b), is substantially the same as proposed § 70.100(b). It requires that each operator must continuously maintain the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways, as measured with an approved sampling device and expressed in terms of an equivalent concentration at or below: (1) 1.0 mg/m³, and (2) 0.5 mg/m³ as of August 1, 2016.

Final paragraph (b)(1), like the proposal, requires that each operator maintain the concentration of respirable coal mine dust at or below 1.0 mg/m³. This standard is consistent with existing § 70.100(b).

Final paragraph (b)(2), like the proposal, requires that each operator maintain the concentration of respirable coal mine dust at or below 0.5 mg/m³ but, in response to comments, MSHA changed the implementation period from the proposed 6-month period to 24 months after the effective date of the final rule.

Proposed § 70.100(b)(2) would have provided a 6-month period for lowering the respirable dust standard in intake airways. MSHA proposed a 6-month period for the 0.5 mg/m³ standard because, based on Agency data for these

areas of the mine, MSHA believed this period would have provided an appropriate amount of time for mine operators to feasibly come into compliance. The proposed 6-month period for the proposed 0.5 mg/m³ standard was independent of proposed § 70.100(a)(2) regarding a 6-month period for the proposed 1.7 mg/m³ interim standard.

During the public comment period, MSHA solicited comment on the proposed phase-in period for lowering the dust standard for intake air courses. Commenters expressed concern that the proposed 6-month period was not sufficient for mine operators to develop, implement, and assess control measures necessary to meet the proposed 0.5 mg/m³ standard. In response to these comments, in the final rule MSHA changed the proposed 6-month period to 24 months after the effective date of the rule. The 24-month period is consistent with the period in final paragraph (a)(2). Like the 24-month period in final paragraph (a)(2), it will allow mine operators sufficient time to comply with the final 0.5 mg/m³ standard in paragraph (b)(2).

One commenter stated that sampling within 200 feet outby the working face is too close to locate the measuring point and that the best location to sample intake air is in the intake air course opposite the loading point.

MSHA has historically required that a lower dust standard be maintained in intake airways within 200 feet of the working faces (45 FR 23990, April 8, 1980). The purpose of the existing respirable dust standard for intake air is to ensure that the air ventilating working faces is sufficiently uncontaminated to assist in controlling respirable dust at the working faces (45 FR 23994). The final 0.5 mg/m³ standard will ensure that intake air ventilating the working faces is sufficiently clean before it reaches the working faces where major dust generating sources are located and where miners work. The required location of the sampling point, within 200 feet of the working face, is consistent with existing § 70.100, which has been in existence since 1980. The location provides an accurate sampling point for measuring respirable dust in intake airways. Similarly, under the final rule, maintaining the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways at or below 0.5 mg/m³ ensures that relatively clean air is used to ventilate the face and where miners work. The lower standard will improve health protection for miners. Also, maintaining the lower dust level using available engineering controls makes it more likely that an operator can maintain compliance with respirable dust standards in the MMU.

One commenter stated that the proposed 0.5 mg/m³ standard is unattainable. MSHA has concluded that this standard is feasible. Of the more than 8,200 samples taken by MSHA inspectors in underground coal operations during 2008 and 2009, less than 6% exceeded 0.5 mg/m³. The feasibility of the 0.5 mg/m³ standard is discussed in more detail elsewhere in this preamble under Section III. C., concerning the Technological Feasibility of Achieving the Required Dust Standards.

One commenter suggested that the rock dust application requirements of the Emergency Temporary Standard published in September 2010 (75 FR 57849) and finalized in June 2011 (76 FR 35968) affect the levels of respirable dust in the intake airway to which miners are exposed and would make compliance with the proposed standard problematic. This comment is addressed elsewhere in this preamble under § 70.101.

4. Section 70.101 Respirable Dust Standard When Quartz is Present

Final § 70.101(a), like proposed § 70.101(a), requires that each operator must continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 0.1 mg/m³ (100 micrograms per cubic meter of air or μg/m³) as measured with an approved sampling device and expressed in terms of an equivalent concentration.

Final § 70.101(b), like proposed § 70.101(b), requires that when the equivalent concentration of respirable quartz dust exceeds 100 μg/m³, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed as measured with an approved sampling device and in terms of an equivalent concentration at or below the applicable respirable dust standard. It also states that the applicable dust standard is computed by dividing the percent of quartz into the number 10. It further requires that the application of this formula must not result in an applicable dust standard that exceeds the standard established by § 70.100(a).

Some commenters stated that they supported a separate standard for silica to better protect miners. One commenter suggested that MSHA develop a program to reduce miners' exposures to silica that would include training, engineering and administrative controls, and respiratory protection. Some commenters who supported a separate silica standard did not support the proposal which would reduce the respirable coal mine dust standard when silica is present. Some of these commenters stated that the proposed formula should be changed and should be based on the percentage of quartz as a percentage of the standard rather than a percentage of the total weight of the sample. In addition, some of these commenters stated that it may not be feasible for certain mining operations to continue to operate if they are on a reduced respirable dust standard that could be as low as, or lower than, 0.5 mg/m³.

Final § 70.101(a) and (b), like the proposal, do not change the existing respirable dust standard when quartz is present and is consistent with existing § 70.101. Existing § 70.101 protects miners from exposure to respirable quartz by requiring a reduced respirable dust standard when the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. Existing § 70.101 is based on a formula that was prescribed by the Department of Health, Education and Welfare (now DHHS). The formula, which applies when a respirable coal mine dust sample contains more than 5.0 percent quartz, is computed by dividing 10 by the concentration of quartz, expressed as a percentage. The formula results in a continuous reduction in the respirable dust standard as the quartz content of the respirable dust increases over 5 percent (i.e., the higher the percentage of quartz, the lower the reduced respirable dust standard).

The standard in final paragraph (a) is based on the formula in existing § 70.101. Final paragraph (a), like existing § 70.101, is designed to limit a miner's exposure to respirable quartz to 0.1 mg/m³ (100 μg/m³-MRE), based on the existing 2.0 mg/m³ respirable dust standard.

The question of revising the existing respirable dust standard when quartz is present by establishing a separate standard for silica will be considered for a separate rulemaking. In addition, comments on the feasibility of meeting reduced respirable coal mine dust standards due to the presence of silica are discussed elsewhere in this preamble under Section III.C. regarding Feasibility.

Some commenters suggested that the rock dust application requirements of the Emergency Temporary Standard

published in September 2010 (75 FR 57849) and finalized in June 2011 (76 FR 35968) affect the levels of silica to which miners are exposed and would make compliance with the proposed standard problematic. These commenters stated that applying rock dust introduces quartz into the sampling air stream thereby contributing to the total amount of respirable dust being measured and is a major source of weight gain in many samples.

If the rock dust used to maintain the incombustible content of the combined coal dust, rock dust, and other dust, meets the definition of rock dust under § 75.2, the applied rock dust does not need to contain a large portion of respirable dust and is allowed to contain a limited amount of silica. Mine operators can work with their suppliers to ensure the rock dust purchased contains a low percentage of respirable dust and very little, if any free silica. Limiting the percentage of respirable material and exercising care in the application of rock dust to limit the exposure of miners working downwind will reduce or eliminate the potential impact on respirable coal mine dust levels.

5. Section 70.201 Sampling; General and Technical Requirements

Final § 70.201 addresses general and technical sampling requirements concerning operator sampling. It includes requirements for sampling with the CPDM. Final § 70.201 is consistent with the Dust Advisory Committee's unanimous recommendation that CPDM technology, when verified, be broadly used along with other sampling methods for evaluation of dust controls at all MMUs and other high risk locations. The Committee further recommended that once verified as reliable, MSHA should use CPDM data for assessing operator compliance in controlling miner exposures and should consider use of CPDM data in compliance determinations. NIOSH has conducted the necessary scientific studies, whose results were published in a peer-reviewed document, which adequately demonstrated the CPDM to be an accurate instrument by meeting the long-standing NIOSH Accuracy Criterion. The recent MSHA and NIOSH approval of the CPDM, as meeting the intrinsic safety and accuracy requirements of 30 CFR part 74, shows that the CPDM is ready to be used as a compliance sampling device in coal mines.

Some commenters stated that operator sampling is not credible and that MSHA should be responsible for all compliance sampling.

The Dust Advisory Committee recommended that MSHA secure adequate resources to carry out compliance sampling but, in the interim, operator compliance sampling should continue with substantial improvement to increase credibility of the program.

In 2009, MSHA conducted a targeted enforcement initiative that focused on miners' exposures to respirable coal mine dust at selected underground coal mines. As a result of the lessons MSHA learned during this initiative, MSHA instructed underground coal mine operators to conduct audits of their respirable dust monitoring and control programs and address any deficiencies. A mine operator is responsible for providing a safe and healthful mining workplace and must design an adequate plan, implement and monitor it, and revise it, as needed. MSHA prepared specific information for miners and mine operators to use as a tool for ending black lung disease. The information provided specific instructions on actions that could be taken to respond to MSHA's program, End Black Lung Act—Now!

Following the 2009 enforcement initiative, MSHA conducted a weeklong dust control emphasis program. During this program, every coal mine inspector dedicated a part of each inspection to health-related activities and applied the lessons learned during the enforcement initiative. Based on these lessons learned, MSHA reviewed the quality of dust controls stipulated in approved ventilation plans, focusing on the primacy of engineering controls and evaluated respirable dust practices during regular inspections. In addition, MSHA training specialists monitored the quality of training provided by industry personnel on the risks of, and methods to prevent, black lung. MSHA is continuing its dust emphasis program in order to increase surveillance of operator sampling and take appropriate action to ensure that an effective system is in place to investigate practices or actions which would cause unrepresentative dust samples to be submitted. MSHA is also continuing to use a national group of MSHA health specialists to conduct focused health inspections. These inspections emphasize the importance of maintaining dust controls to protect miners.

Some commenters stated that existing sampling procedures do not reflect accurate measurements of miners' exposure to respirable coal mine dust. The accuracy of the CMDPSU and the CPDM is discussed in the section-by-section analysis concerning § 72.800 Single, Full-shift Measurement of Respirable Coal Mine Dust and Section III.C., Feasibility, respectively, of this preamble.

Some commenters stated that only the miner needs to be sampled to get a miner's exposure. This comment is addressed elsewhere in this preamble under § 70.201(c).

Final paragraph (a) is changed and clarified from the proposal. It requires that an approved CMDPSU be used to take bimonthly samples of the concentration of respirable coal mine dust from the designated occupation (DO) in each MMU until January 31, 2016. It also requires that, effective February 1, 2016, DOs in each MMU must be sampled quarterly with an approved CPDM as required by this part and an approved CMDPSU must not be used, unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling.

Final paragraph (a) changes the proposed implementation period for using the CPDM from 12 to 18 months after the final rule is effective. Paragraph (a) clarifies that during the 18-month period, an operator must take bimonthly samples of the DO in each MMU using a CMDPSU. It further clarifies that, after the 18-month period, bimonthly sampling will cease and the DO in each MMU must be sampled quarterly with an approved CPDM instead of a CMDPSU, unless the Secretary provides notification to continue using a CMDPSU for quarterly sampling.

On October 14, 2009, MSHA published a request for information (74 FR 52708) on the use of the CPDM as a sampling device to measure a miner's exposure to respirable coal mine dust. All commenters generally agreed that the required use of a CPDM would enhance the protection of miners' health.

On March 8, 2011, MSHA issued in the **Federal Register** a request for comments (76 FR 12648) and stated that in the proposal, MSHA also planned to phase in the use of CPDMs to sample production areas of underground mines and part 90 miners. MSHA solicited comments on the proposed phasing in of CPDMs, including time periods and any information with respect to their availability. MSHA requested commenters to provide the rationale if they recommended shorter or longer time frames (76 FR 12649).

Some commenters suggested that the proposed 12-month period should be lengthened; others suggested that it be shortened. A few commenters suggested that MSHA should extend the phase-in

period and allow the use of both, the CMDPSU and the CPDM, during the phase-in period because limiting the type of equipment when there is a new technology available can result in problems.

In response to the comments, final paragraph (a) extends the time after which only a CPDM can be used to conduct operator sampling, from 12 to 18 months to allow operators additional time to obtain CPDMs and train miners in the use of these devices. In addition, the requirement that a CMDPSU be used to conduct sampling during the 18 months following the effective date of the final rule addresses commenters' concerns that the proposed sampling provisions were too confusing. Final paragraph (a) simplifies the proposed sampling requirements by requiring that all operators continue to sample production areas bimonthly with the CMDPSU for the first 18 months after the effective date of the rule and that the operators stop sampling bimonthly and switch to quarterly sampling with the CPDM after the 18-month period. Additionally, maintaining operators' existing bimonthly sampling with a CMDPSU during the 18 months following the effective date of the rule allows operators time to concentrate on their dust control systems, train miners on the new sampling requirements, and learn how to operate the CPDM and certify persons to handle the CPDM.

MSHA is aware that the CPDM will be in demand and there is currently only one manufacturer of the device. MSHA has contacted the manufacturer and discussed the amount of time needed to produce the necessary quantity of CPDMs. In addition, MSHA considered the amount of time it would take for the Agency and operators to train necessary personnel in the use and care of the device. An 18-month period after the effective date of the final rule should be a sufficient amount of time for production of the CPDM and training on the use of the CPDM. Under the final rule, the amount of sampling and, thus, the number of CPDMs needed are significantly reduced from what the proposal would have required. However, if MSHA determines that there are logistical or feasibility issues concerning availability of the CPDM, MSHA will publish a notice in the **Federal Register** to continue to use an approved CMDPSU to conduct quarterly sampling. In addition, assuming no technological issues arise concerning the use and manufacture of CPDMs, and depending on manufacturer projections, if CPDMs are not available in sufficient quantities, MSHA will accept, as good faith evidence of compliance with the final rule, a valid, bona fide, written purchase order with a firm delivery date for the CPDMs.

Some commenters stated that MSHA underestimated the number of CPDMs needed to comply with the proposal. In the development of the final rule, MSHA discovered an error in MSHA's estimates for the number of CPDMs that would have been required to sample ODOs under the proposed rule. Chapter IV of the REA for the final rule discusses MSHA's underestimation and provides a revised calculation of the number of CPDMs that would have been needed under the proposal.

Final paragraph (b) is changed from the proposal. It requires that an approved CMDPSU be used to take bimonthly samples of the concentration of respirable coal mine dust from each designated area (DA) as required by this part until January 31, 2016. The proposal would have required quarterly sampling of the DA on the effective date of the final rule. The bimonthly sampling requirement of DAs for the first 18 months after the effective date of the final rule is consistent with the bimonthly sampling required by existing § 70.201. Continuing the existing bimonthly sampling of DAs during the 18-month period is also consistent with the bimonthly sampling of DOs in each MMU required by final paragraph (a). As discussed above, the 18-month period, after which the use of CPDMs is required, will provide sufficient time for manufacturers to produce the necessary quantity of units and for MSHA and operators to train personnel in the use and care of the CPDM. On February 1, 2016, final paragraph (b)(1) requires that DAs associated with an MMU be redesignated as Other Designated Occupations (ODO). Paragraph (b)(1) clarifies that ODOs must be sampled quarterly with an approved CPDM as required by this part and an approved CMDPSU must not be used, unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling. Final paragraph (b)(1) is derived from proposed paragraphs (b) and (c).

A few commenters stated that requiring existing DAs associated with an MMU to be redesignated as ODOs will not result in any increased protection for miners because the DO is the occupation that is most exposed to respirable dust. These commenters stated that the additional sampling is too burdensome and costly especially on small mine operators.

Existing DAs associated with an MMU are to be designated as ODOs because the sampling would be used to measure respirable dust exposure of occupations on an MMU rather than areas associated with an MMU. Examples of DAs associated with an MMU that would be designated as ODOs and an explanation of the frequency of sampling ODOs are in final § 70.208(b) concerning quarterly sampling. The final rule will help ensure that the sample reflects an accurate measurement of the occupation monitored and will provide comparable protection for ODOs and DOs. For example, ODOs identified by the District Manager would be based on MSHA's historical sampling data on the MMU. Sampling of ODOs such as shuttle car operators on MMUs using blowing face ventilation would be required because MSHA's data show that sampling only the DOs does not always adequately protect other miners in the MMU. In response to commenters' concerns, under § 70.208 of the final rule, operators will sample each DO and each ODO each calendar quarter until 15 valid representative samples are collected for each. The total number of samples required from the DO and ODO is less than the total proposed 24/7 sampling of the DO and sampling of the ODO for 14 shifts. The required sampling for a typical MMU using blowing face ventilation will have 1 DO and 2 ODOs and, under the final rule, will require sampling until 15 valid representative samples are collected each from that DO and each ODO during the calendar quarter. Sampling of an ODO must follow completion of sampling for the DO, and sampling of a second ODO must follow completion of sampling for the first ODO. Additional discussion of sampling ODOs that are redesignated from existing DAs is provided in § 70.208 regarding quarterly sampling of MMUs.

Final paragraph (b)(2) is similar to proposed paragraph (d). On February 1, 2016, final paragraph (b)(2) requires that DAs identified by the operator under § 75.371(t) of this chapter be sampled quarterly with an approved CMDPSU as required by part 70, unless the operator notifies the District Manager in writing that an approved CPDM will be used for all DA sampling at the mine. The notification must be received at least 90 days before the beginning of the quarter in which CPDMs will be used to collect the DA samples.

Paragraph (b)(2) clarifies that the quarterly sampling of the DAs applies to those DAs that are identified by the operators under § 75.371(t). In addition, paragraph (b)(2) clarifies that the operators may use the CMDPSU while conducting DA sampling but, if operators plan to conduct DA sampling using the CPDM rather than the

CMDPSU, operators must notify MSHA of their intent to do so. This clarification ensures that operators do not switch between sampling devices on successive quarterly sampling periods, or use both sampling devices during the same sampling period. The 90-day notification period allows MSHA sufficient time to modify MSHA's health computer system to accept CPDM electronic records for all DAs located at the mine.

One commenter stated that DA sampling should be eliminated because MSHA stated that using the CPDM is not the best use for sampling a DA. DA sampling provides important information needed to evaluate the dust controls used in the DA so that the mine operator can ensure that miners working in these areas are protected. Because the CMDPSU reports of sample results provide the necessary information for these area samples, and because the CPDM is designed to be worn, the final rule provides that a mine operator must use CMDPSUs for sampling DAs. However, a mine operator may, upon notifying the District Manager, use CPDMs for sampling all DAs in a mine.

Final paragraph (c) is the same as proposed paragraph (e). Like the proposal, it requires that sampling devices be worn or carried directly to and from the MMU or DA to be sampled and be operated portal-to-portal. In addition, it requires that sampling devices remain with the occupation or DA being sampled and be operational during the entire shift, which includes the total time spent in the MMU or DA and while traveling to and from the mining section or area being sampled.

Several commenters supported the proposal that sampling devices be operational while traveling to and from the mining section or area being sampled. Paragraph (c) clarifies the existing requirement that the sampling device be operated portal-to-portal. Miners are exposed to respirable dust while traveling to and from the working section or area being sampled. Many miners ride mantrips onto the section, some for as long as an hour, during which time miners are exposed to respirable dust. Sampling during travel time provides an accurate measurement of respirable dust exposures during usual work conditions because it accounts for all the time that a miner works and is exposed to respirable coal mine dust.

Many commenters expressed support for full-shift sampling. Some of these commenters indicated that it is not uncommon today for miners to work longer than the traditional 8-hour work shift and agreed that it is appropriate to determine miners' respirable dust exposure based on their full work shift. Other commenters acknowledged that turning off a sampler after 8 hours is not representative of the time that miners work and the respirable dust conditions in which they work.

MSHA agrees with commenters and believes that it is more appropriate to determine miners' daily exposures based on their full work shift. Full-shift sampling will provide operators with the opportunity to manage miners' exposure to coal mine dust so that miners will be adequately protected. MSHA estimates that the average work shift on active mining units is approximately 9 hours for non-longwall mining and 10 hours for longwall mining. Working shifts longer than 8 hours increases exposure to respirable coal mine dust, resulting in increased health risks to miners, both in terms of incidence and severity. In addition, limiting the sampling duration to 8 hours, when a miner's work shift may be 10 hours, 12 hours, or longer, does not provide an adequate assessment of the respirable dust exposure during the full shift. According to NIOSH's Current Intelligence Bulletin 64 (''CIB 64''), Coal Mine Dust Exposures and Associated Health Outcomes—A Review of Information Published Since 1995 (2011): ''U.S. coal miners are working longer hours, which leads to the inhalation of more respirable coal mine dust into the lungs.''

Final paragraph (c) is consistent with the 1996 Advisory Committee's Report, the 1995 NIOSH Criteria Document, and the conclusions of the 1992 Coal Mine Respirable Dust Task Group Report. This final provision is also consistent with generally accepted industrial hygiene principles today, which take into consideration all of the time a worker is exposed to an airborne contaminant, even if it exceeds 8 hours a day.

Therefore, final paragraph (c) requires operators to sample during the entire shift as discussed above, portal to portal, rather than a maximum of 8 hours. This will account for all the time that a miner works and allow more representative measurement of miners' exposures to respirable coal mine dust.

Final paragraph (c), like the proposal, continues the area sampling requirement of existing § 70.201(b). Under the final rule, the sampling device must remain with the occupation or DA being sampled during the entire shift to ensure that respirable dust concentration levels are continuously being monitored. If a miner in an occupation being sampled changes from one occupation to another during the production shift, the sampling device must remain with the occupation designated for sampling. For example, if using a CPDM to sample a DO (continuous mining machine operator) on a continuous mining section and the duties of the machine operator are divided equally between Miner 1 and Miner 2, the dust sampler must be worn for half the shift by Miner 1 and the other half by Miner 2, while each is operating the continuous mining machine. Similarly, a dust sampler must remain at the DA during the entire shift. Once sampling results are available, mine operators and MSHA would analyze the data to determine if adjustments need to be made (e.g., re-designating DOs or modifying dust control parameters).

In the March 8, 2011, request for comments (76 FR 12650), MSHA stated that some commenters suggested during the rulemaking hearings that, for compliance purposes, respirable dust samples should be taken only on individual miners in underground coal mines. MSHA further stated that, under the existing rule, MSHA enforces an environmental standard, that is, the Agency samples the average concentration of respirable dust in the mine atmosphere. MSHA also stated that the proposed rule would continue the existing practice that samples be collected from designated high-risk occupations associated with respirable dust exposure and from designated areas associated with dust generation sources in underground mines. MSHA solicited comments on the sampling strategy in the proposed rule, any specific alternatives, supporting rationale, and how such alternatives would protect miners' health.

Some commenters supported the continuation of area sampling. One of these commenters preferred area sampling over personal sampling stating that personal sampling would necessitate that every miner be sampled. This commenter also stated that a miner's activities, e.g., lunch break, should be considered as part of his normal activity and count towards normal exposure. Another commenter stated that area sampling makes sense only when using the CMDPSU.

Many commenters stated that they preferred personal sampling, particularly when using the CPDM, because the CPDM provides an accurate measurement of an individual miner's exposure rather than potential exposure at a single work location. Many of these commenters stated that the CPDM was designed and tested for personal sampling and personal exposure and that using it for area sampling defeated

its designated purpose because it was not designed to be hung and left unattended. These commenters also stated that the CPDM was designed to provide immediate information to the miner so that the miner could make immediate adjustments in behavior, tactical positioning in relation to dust sources, or mining procedures. A few commenters stated that not conducting personal sampling hinders an operator's ability to rotate miners to reduce exposures. Some commenters suggested that full-shift personal sampling of the highest risk miner on all production shifts would provide a valuable data base for researchers to use to pinpoint areas in need of improvement and provide miners with real time data that they could use to prevent overexposure resulting in reduced exposure to dust concentrations without any need to reduce the existing permissible level. Some commenters stated that area sampling is an antiquated practice and adds to sampling complexity by requiring new plan approvals and irrelevant details. Other commenters stated that passing the pump from miner to miner as is required during area sampling causes measurement errors and does not result in a true representation of the miner's exposure. A few commenters stated that individual sampling is preferred by industrial hygienists, and one commenter noted that personal sampling is consistent with the NIOSH recommendation and OSHA's sampling approach. A number of commenters stated that the final rule should provide for sampling underneath a respirator, in the miner's immediate breathing zone, instead of requiring atmospheric sampling.

The Advisory Committee recommended a mix of samples—personal, occupational, and area—to be a reasonable, systematic approach for the determination of miners' respirable dust exposure and subsequent control of exposure. The NIOSH Criteria Document stated that personal sampling is preferable and that area sampling should be substituted for personal sampling only where area sampling has been shown to measure an equivalent or higher concentration. However, the NIOSH Criteria Document also stated area sampling is sufficient under Section 202(b) of the Mine Act.

An area sample is one taken at a fixed location. It measures the concentration of respirable dust in that location and not necessarily the exposure of any individual. Area sampling under existing § 70.201(b) involves sampling the occupation or DA and has been in use by MSHA since 1970. Section 202(b)(2) of the Mine Act requires an operator to ''. . . continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed. . . . '' The purpose of this provision, as set forth in Section 201(b) of the Mine Act, is to ensure that ''the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations in the mine atmosphere to permit each miner the opportunity to work underground during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period.'' 30 U.S.C. 841(b). The area sampling requirement of the final rule is consistent with sections 201(b) and 202(b)(2) of the Mine Act. Rather than measuring the exposure of any individual miner for the duration of a shift, area sampling allows an operator to monitor the mine atmosphere with the greatest concentration of respirable dust in the areas where miners are working or traveling and to take corrective measures that protect each miner working or traveling in the area. For example, based on the various dust generating sources and the manner in which the face is ventilated, the area by the continuous mining machine operator on a continuous mining MMU is the area on a continuous mining MMU with the greatest concentration of respirable dust. Since miners are required to work in this area, operators are required to maintain the mine atmosphere in this area or location in compliance with the dust standard on each shift. By doing so, other miners in less risky occupations are protected from excessive dust concentrations.

While area sampling does not show a particular miner's dust exposure, the area sampling results will show whether miners are exposed to excessive dust concentrations. The objective of area sampling is to control the concentration of respirable dust to which miners are exposed in the workplace. In *American Mining Congress* v. *Secretary of Labor,* 671 F.2d 1251 (10th Cir. 1982), the Court found that area sampling was reasonable and consistent with the Mine Act.

If placed in a fixed location, the CPDM will provide an accurate measurement of the respirable dust in the atmosphere where miners work or travel. In addition, it will provide immediate information to the miners working in that location so that the mine operator could make immediate adjustments in controls in relation to dust sources to reduce dust generation or suppress, dilute, divert, or capture the generated dust. Compared with administrative controls or respirators, well-designed engineering controls provide consistent and reliable protection to all workers because the controls are less dependent on individual human performance, supervision, or intervention to function as intended. Area sampling with the CPDM will also provide information on miners' exposure in areas with the highest concentration of dust. This will give the mine operator and MSHA valuable data to pinpoint areas in need of improvement.

Passing the CPDM from miner to miner will not cause measurement errors because passing the CPDM is done in conjunction with a certified person. The certified person will ensure that the CPDM is properly handled when passed from one miner to the next. In addition, MSHA has not received any notification on dust data cards indicating any significant issues encountered during the switching of the existing CMDPSU since 1981. Area sampling effectively achieves the purpose of the Mine Act to protect the health of miners by requiring operators to maintain good air quality in the mine.

Final paragraph (c)(1) is the same as proposed paragraph (e)(1). It requires that when using a CMDPSU and the work shift to be sampled is longer than 12 hours, the operator must switch-out the unit's sampling pump prior to the 13th hour of operation.

Final paragraph (c)(2) is the same as proposed paragraph (e)(2). It requires that the operator switch-out the CPDM with a fully charged device prior to the 13th hour of operation, if the work shift to be sampled is longer than 12 hours.

In the March 8, 2011, request for comments (76 FR 12649), MSHA stated that the Agency understands that some work shifts are longer than 12 hours, and that dust sampling devices generally last for approximately 12 hours. MSHA solicited comments on appropriate time frames to switch-out sampling devices, CMDPSUs or CPDMs, to ensure continued operation and uninterrupted protection for miners for the entire shift.

Some commenters stated that switching out the pump prior to the 13th hour is financially burdensome to the operator because it will require purchasing additional pumps. Other commenters stated that until the CPDMs are available, the CMDPSU should only be used for 8 hours because mechanical problems may require a miner to work over 12 hours and additional samplers may not be readily available. Some

commenters stated that it would probably be best to change the sampling device after the end of an eight-hour shift to make certain the unit has enough battery life to cover the number of hours a miner works and the results of the samples could then be combined.

The CMDPSU manufacturer's instructional manual states that the typical battery-pack service life varies from a minimum of 8 hours to a maximum of 11.5 hours. However, the manufacturer's testing parameters are more rigorous than the conditions in the mine. The pumps are tested in extreme levels of coal mine dust which cause large amounts of dust to accumulate on the filter. This leads to high back pressure, requiring the pump to work harder, and resulting in a shorter battery life. With the use of proper dust controls, the pump will not have to work as hard, thereby prolonging the battery life. To address shifts greater than 12 hours, the final rule requires that the unit be switched-out prior to the 13th hour to prevent disruption in operation and to provide continued protection for miners. Mine operators who have knowledge that their sampling pumps will not last more than 12 hours should change them out sooner to ensure the full sampling period is covered. If the battery is depleted before the end of the shift, the sample would be voided.

NIOSH's Report of Investigations 9669, Laboratory and Field Performance of a Continuously Measuring Personal Respirable Dust Monitor (Volkwein et al., NIOSH (2006) suggests that 12 hours of battery power be provided to the CPDM. In addition, 30 CFR 74.7(i) requires the CPDM to have sufficient battery capacity to operate for 12 hours. The final rule is consistent with NIOSH's report and the existing CPDM approval requirements in 30 CFR part 74. It requires that the CPDM be switched-out prior to the 13th hour to prevent disruption in operation and to provide continued protection for miners.

Final paragraph (d) is substantially the same as proposed paragraph (f). It requires that, if using a CMDPSU, one control filter be used for each shift of sampling. Each control filter must: (1) Have the same pre-weight date (noted on the dust data card) as the filters used for sampling; (2) Remain plugged at all times; (3) Be used for the same amount of time, and exposed to the same temperature and handling conditions as the filters used for sampling; and (4) Be kept with the exposed samples after sampling and in the same mailing container when transmitted to MSHA. MSHA did not receive comments on the proposed control filter requirements.

Final paragraph (d), which requires an operator to use control filters when sampling, is consistent with accepted industrial hygiene principles and practice. A control filter is an unexposed filter of the same design as the filter used for sampling and is pre- and post-weighed on the same day as the filter used for sampling. MSHA first began using control filters in its enforcement program in May 1998 and continues this practice today. Control filters improve measurement accuracy by eliminating the effect of differences in pre- and post-exposure laboratory conditions, or changes introduced during storage and handling of the filter cassettes. The final rule extends the program in effect since July 2007, which allows operators to use control filters in the optional quartz sampling program, to the entire sampling program. The control filter must be used for all operator sampling to adjust the resulting weight gain obtained on each exposed filter by subtracting any change in the weight of the control filter from the change in weight of each exposed filter. This is especially important since the filter cassettes to be used by operators would be pre-weighed by the manufacturer and post-weighed by MSHA. To ensure the precision and accuracy of the pre-weight of filters, MSHA audits the daily production of filter cassettes. The program conforms to ANSI/ASQ Z1.4–2008, ''Sampling Procedures and Tables for Inspection by Attributes,'' which defines the criteria currently used to monitor the quality of the operator bimonthly sampling program.

Since the control filter would be used to adjust the resulting weight gain obtained on each exposed filter cassette, the control filter must have the same pre-weight date as the filter cassette to be used for sampling on the same shift. The pre-weight date is noted on the dust data card. To prevent exposure to the mine environment, the plugs attached to the inlet and outlet side of the cassette must not be removed. Also, it is important that the control filter be used for the same amount of time, and exposed to the same temperature and handling conditions as the ones that are used for sampling, i.e., carry the control filter in a shirt or coverall pocket while underground. While the control filter can be carried by any miner assigned to the MMU being sampled, it would be preferable if that miner performed the job of the DO. Finally, the control filter cassette must be kept together with the exposed samples after sampling and should be treated in the same manner as the exposed filters prior to being transmitted to MSHA. Failure to follow these instructions would be cause for voiding the sampling results.

Final paragraph (d)(4) requires that the control filter must be in the same mailing container as the exposed samples when transmitted to MSHA. This provision is new and will ensure that the control filter and the sample are linked during processing of the sample that is being submitted to MSHA.

Final paragraph (e) is the same as proposed paragraph (g). It requires that records showing the length of each production shift for each MMU be made and retained for at least six months and be made available for inspection by authorized representatives of the Secretary and the representative of miners, and submitted to the District Manager when requested in writing.

One commenter stated that production shift records should be retained for 12 months. A few commenters stated that the production shift records are unnecessary and excessively burdensome.

Under the final rule, mine operators need to know the length of the production shift to enter this information into the CPDM or record it on the CMDPSU dust card. The information is also necessary for MSHA to verify that an operator is accurately recording the production shift lengths for sampling. The 6-month retention period will give MSHA adequate time to review the records. Although some commenters suggested longer retention periods for production records, the Agency does not believe that a longer period is justified in light of the record's purpose.

Final paragraph (f) is the same as proposed paragraph (h). It requires that upon request from the District Manager, the operator must submit the date and time any respirable dust sampling required by this part will begin, and that this information be submitted at least 48 hours prior to scheduled sampling.

One commenter supported the proposal. Another commenter stated that the proposed requirement to submit information to MSHA 48 hours prior to scheduled sampling creates a burden on MSHA. One commenter suggested that less than 48 hours notice should be allowed for legitimate reasons provided the District Manager is notified of the change. The 48-hour notification requirement does not create a burden on MSHA; rather it provides MSHA with the opportunity to observe and monitor operator sampling to ensure that both operating conditions and sampling requirements are met. MSHA will consider mitigating circumstances if

conditions or activities outside the operator's control interfere with meeting the 48-hour requirement. Under those circumstances, however, the mine operator would need to notify the District Manager of any changes to the sampling schedule as soon as possible.

Final paragraph (g) is the same as proposed paragraph (i). It requires that to establish a normal production shift, the operator record the amount of run-of-mine material produced by each MMU during each shift to determine the average production for the most recent 30 production shifts, or for all the production shifts if fewer than 30 shifts of production data are available. It further requires that production records be retained for at least six months and be made available for inspection by authorized representatives of the Secretary and the miners' representative.

The final rule is consistent with the Dust Advisory Committee's recommendation that MSHA require the mine operator to maintain the appropriate production records. MSHA currently relies on production information provided by the operator to determine at what production level the mine ventilation plan should be evaluated. No production records are required for each MMU. Although operators must submit production data on a quarterly basis, the data are compiled for the entire mine. In addition, quarterly reports provide information on the amount of clean coal produced, which is much lower than the tonnage of total run-of-mine material produced, and is not useful for establishing what constitutes a normal production shift for each MMU for sampling.

MSHA will use the production records to establish a normal production level. If there were no records indicating typical production levels in the mine, MSHA would be unable to determine whether an operator's sampling of dust concentrations occurred during a shift that reasonably represented typical production levels and mining conditions.

One commenter stated that production records to establish a normal production shift would not be necessary once operators were required to sample with CPDMs every production shift, 7 days per week, 52 weeks per year. The final rule does not require 24/7 continuous sampling. This commenter also stated that, under the revised definition of an MMU, it would be difficult to separate production between two sets of equipment because shuttle cars may pull coal from different continuous mining machines.

The MMU production is associated with the amount of material cut and loaded by the mining machine (continuous mining machine, loading machine, etc.). The mine operator must relate the production of material to the MMU. Which shuttle cars are pulling from a specific MMU does not determine the amount of material produced by each MMU. MMU-specific information is available through various methods and MSHA believes that the majority of mines currently track production on a per-MMU basis.

One commenter requested a 12-month record retention period. The 6-month period will allow MSHA sufficient time to review the production records and, therefore, a longer retention period is not necessary. The 6-month time allows MSHA adequate time to be at the mine and have access to sampling data to determine if the samples are representative samples.

Final paragraph (h) is substantially similar to proposed paragraph (j). It requires that mine operators using CPDMs provide training to all miners expected to wear a CPDM. The training must be completed prior to a miner being required to wear a CPDM, and then every 12 months thereafter. This training must be provided to each miner working in a position as a DO or ODO. In addition, if a CPDM is used for DA sampling, and the DA location for the sample is on the miner performing specific tasks, the training must be provided to the miner that will be wearing the CPDM.

Many commenters supported initial and annual retraining requirements on the CPDM and indicated that the knowledge was necessary to help reduce dust exposure. One commenter generally stated that the proposed training requirements are burdensome for the mine operator. One commenter recommended that refresher CPDM training be provided every 6 months. A few commenters indicated that the 12-month retraining requirement is extensive and does not achieve any safety benefit for miners who only wear the CPDM and do not set it up.

The Mine Act recognizes the importance of miner training and education in the prevention of injury and disease. In accordance with Section 115(b) of the Mine Act, training must be provided during normal working hours and miners must be paid at their normal rate of pay while they take such training. In addition, if the training is provided at a location other than the normal place of work, miners must be compensated for the additional costs they may incur in attending such training sessions. 30 U.S.C. 825.

Initial training is appropriate to ensure miners wearing CPDMs understand the function and purpose of the equipment they are wearing and the importance of monitoring dust concentrations. Although certified persons set up the CPDMs, a miner who is trained on the use and operation of the sampler and information displayed on the CPDM is more likely to recognize potential problems and respond to them appropriately. Based on MSHA's experience and consistent with other 30 CFR training requirements, training is most effective when provided close to the time when the miner is expected to wear the CPDM and then reinforced every 12 months. It is essential that miners who wear a CPDM have a fundamental understanding of its operation even if they are not setting up the CPDM for sampling. Usage of the CPDM by miners, such as accessing information and collecting short-term samples, is discussed below concerning paragraphs (h)(3) and (h)(4).

MSHA received several comments both for and against including CPDM training in part 48 training. Several commenters suggested that the training should be included in part 48 new miner training, experienced miner training and annual refresher training. Other commenters stated that the initial and annual CPDM training should not be incorporated into part 48 training, generally stating that part 48 training already includes too much information, making it difficult for miners to retain all that is given. They indicated that it is important to give miners the needed time to learn about the CPDM.

After reviewing all the comments, MSHA determined that additional training should not be added to part 48 training. MSHA considered whether training on the operation and use of the CPDM could be adequately covered under part 48 training, taking into account the other subjects that part 48 is required to address. MSHA determined that it is impractical to include the proposed comprehensive training on CPDMs within the prescribed time limits under part 48. Additional time should be allotted for CPDM training under part 48. However, operators may choose to provide CPDM training separately from training under part 48, or may provide CPDM training on days that part 48 training is held as long as additional time is designated to ensure that training on the CPDM required under the final rule is sufficient.

Final paragraphs (h)(1)–(4) are similar to proposed paragraphs (j)(1)–(5). Proposed paragraph (j)(2) would have required all miners to be instructed on

how to set up the CPDM for compliance sampling. Some commenters stated this was unnecessary and were concerned that it could lead to persons who are not certified performing functions that require certification.

In response to the comments, the final rule requires mine operators to have certified persons set up the CPDM for compliance. Therefore, it is not necessary to train miners on the set up of the CPDM. Miners who are not certified persons are, however, required to be trained on topics that pertain to shift sampling under final paragraph (h). Final paragraph (h)(1) is similar to proposed (j)(5). It requires that the training include the importance of monitoring dust concentrations and properly wearing the CPDM. Final paragraph (h)(1) includes a conforming change. The proposal would have required training on the importance of ''continuously'' monitoring dust concentrations. Since continuous monitoring is not required by the final rule, the term ''continuously'' is not included in paragraph (h)(1). Commenters generally agreed that miners need to be trained on the importance of monitoring dust and how to wear the CPDM.

Final paragraph (h)(2) is the same as proposed (j)(1). It requires that training include explaining the basic features and capabilities of the CPDM. One commenter indicated that training miners in all functions of the CPDM may result in an uncertified person activating functions that only a person certified in sampling, maintenance, and calibration should be able to access. Most commenters supported the proposed requirement, noting that miners have a right to know the features and functions of the equipment, and its capabilities, as well as what the collected information means.

It is vital that miners are properly trained on the operation of CPDMs to ensure the integrity and credibility of the sampling process. For the sampling program to be effective, miners must understand the proper use of the CPDM and its operation. Well-informed miners are more likely to make the most of the capabilities of the new CPDM technology.

Final paragraph (h)(3) is similar to proposed paragraph (j)(3). Like the proposal, it requires that training include discussing the various types of information displayed by the CPDM and how to access that information. This training will provide a miner with an understanding of how to use the displayed data to assess any concerns of overexposure to respirable dust. Several commenters expressed concern about training on how to access information on a CPDM. One commenter stated that only persons certified in sampling, maintenance, and calibration should be able to access data that are not readily displayed during use. The commenter added that if miners access data, it would have negative effects on the sampling process.

To clarify, this training is limited to accessing information that is readily available by pushing a button located on the CPDM. This only changes the information provided on the display screen and does not affect programming of the CPDM to collect a full-shift sample. The training is necessary to provide users with an understanding of how to access the various screens and data displayed on these screens, but not to change the settings on the CPDM.

Final paragraph (h)(4) is the same as proposed paragraph (j)(4). It requires that training include how to start and stop a short-term sample run during compliance sampling. A short-term sample is an engineering evaluation, which runs for a term shorter than the full-shift sampling, and provides information on respirable dust levels in a particular location.

One commenter stated that it is not necessary to train a miner, who simply is going to wear the unit for sampling, on how to start, stop, reset, or to do any function that is required to be performed by a certified person.

It is important that miners be able to conduct, access, and view short-term sampling. This would not interfere with an ongoing compliance sampling run and would not change any programmed settings entered by a certified person. Short-term samples can provide a miner with immediate information regarding the real-time dust levels in his work location. As changes are made in dust controls on the MMU, or in the miner's physical location, short-term sampling will provide data concerning the miner's exposure to respirable dust. These data will be useful to the miner in making adjustments to his work practices. Miners do not need to be certified in sampling to be able to conduct the short term sampling.

Final paragraph (i) is similar to proposed paragraph (k). It requires that an operator keep a record of training at the mine site for 24 months after completion of the training. It also provides that an operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. It further requires that, upon request by an authorized representative of the Secretary, Secretary of HHS, or representative of miners, the operator must promptly provide access to any such training records. Final paragraphs (i)(1)–(3) require the record to include the date of training, the names of miners trained, and the subjects included in the training.

Final paragraph (i) makes a non-substantive change by replacing the proposed term ''2 years'' with ''24 months.''

Final paragraphs (i)(1)–(3) are new; they were added to clarify that the record must contain sufficient information for an authorized representative of the Secretary, Secretary of HHS, or miners' representative to determine that the operator has provided CPDM training in accordance with requirements in paragraph (h). This is the type of information that is generally required for all training records to establish that the training has occurred.

One commenter stated that the proposed requirement to keep records is burdensome. Another commenter favored the proposed retention period. Record retention for the 24-month period is important so that MSHA can determine that the required initial and retraining has been provided.

Final paragraph (j) is new. It provides that an anthracite mine using the full box, open breast, or slant breast mining method may use either a CPDM or a CMDPSU to conduct the required sampling. It requires that the mine operator notify the District Manager in writing of its decision to not use a CPDM. Final paragraph (j) is added in response to comments that the CPDM will be damaged or destroyed by miners going up and down the pitch in an anthracite mine. In addition to damage to the unit, MSHA has concluded from its experience with anthracite mines, that miners may also be injured due to the particular configuration of such mines. Therefore, final paragraph (j) allows operators to use either sampling device due to the potential hazards to the miner associated with mining in such confined spaces with extremely pitching coal seams.

Final paragraph (k) is similar to proposed § 70.209(h) and moved to this final § 70.201. It provides that MSHA's approval of the dust control portion of the operator's mine ventilation plan may be revoked based upon samples taken by MSHA or in accordance with this part 70. Paragraph (k) is consistent with existing § 70.208(f) and is moved to final § 70.201 to clarify that, consistent with existing enforcement policy, its provisions apply to all underground sampling entities and not just DAs.

One commenter stated that proposed § 70.209(h), which stated that MSHA

approval of the operator's ventilation system and methane and dust control plan may be revoked based on samples taken by MSHA or the operator, is excessive. The commenter stated that a ventilation plan is not inadequate because a sample exceeds the proposed ECV or the WAE exceeds the WPAE. The commenter further stated that the District Manager should be required to follow the procedures in MSHA's Program Policy Manual, Volume V, page 6, MSHA Initiated Plan Changes, to revoke the ventilation plan. Another commenter stated that mine operators have no effective remedy in plan disputes. This commenter stated that MSHA opposes expedited hearings before the Federal Mine Safety and Health Review Commission on this sort of issue, and that the backlog of cases precludes actual expedited consideration.

In response to comments, paragraph (k) clarifies that MSHA may revoke the respirable dust control portion of the ventilation plan based on sample results, but not the entire ventilation plan. MSHA intends to notify the operator, in the citation issued for excessive dust, of the revoked dust control portion of the approved ventilation plan. Final paragraph (k) ensures that respirable dust controls are updated timely to ensure miners' exposures to excessive respirable dust are controlled on each and every shift.

6. Sections 70.202 Certified Person; Sampling and 70.203 Certified Person; Maintenance and Calibration

Final §§ 70.202 and 70.203, like the proposal, retain the requirements in existing §§ 70.202(a) and 70.203(a) that respirable dust sampling be performed by a person certified to collect dust samples and handle dust samplers while they are in operation, and that maintenance and calibration of approved samplers be performed by a person certified to perform such tasks.

Although the proposal did not include revisions to the existing requirements in §§ 70.202(a) and 70.203(a), one commenter recommended that MSHA eliminate the requirement that dust sampling and maintenance and calibration of approved sampling devices be performed by certified persons. The commenter stated that restricting dust sampling collection to certified persons does nothing to further the quality of the sampling process and that certification does not ensure that dust sampling is any better than if conducted by a non-certified person.

Certification ensures the validity of collected samples and the integrity of the dust sampling program. The collection of respirable dust samples by untrained persons, or with sampling devices that are not maintained as approved or calibrated in accordance with required procedures, would significantly affect the accuracy and quality of dust samples. Under that scenario, the entire dust program would be undermined and the protections from dust exposure afforded coal miners under the standards would be reduced. To maintain the integrity of MSHA's dust program, there must be competency standards for those entrusted with administering the program.

One commenter questioned the need for certified industrial hygienists to become MSHA-certified in sampling, stating that certified industrial hygienists are qualified to conduct respirable dust sampling and do not need further instruction or a separate certification. The commenter also pointed out that MSHA certification in such cases is costly.

MSHA recognizes that industrial hygienists have to meet certain educational and experience-based thresholds to become professionally certified and maintain certification as industrial hygienists. However, an independent MSHA certification process is needed for MSHA's dust sampling program. In general, industrial hygienists must demonstrate a basic technical understanding of industrial hygiene practices in a broad number of subject matters in order to become certified. However, the comprehensive nature of the industrial hygienist certification examination does not ensure that the individual has knowledge of MSHA-specific requirements that are necessary to carry out MSHA's dust monitoring program. A certification process specifically directed at evaluating familiarity with the intricacies of the dust sampling requirements is needed to maintain the quality of MSHA's dust program. For example, MSHA's certification process tests knowledge of key dust-related standards contained in 30 CFR; sampling and calibration equipment to be used; and procedures used for maintenance and calibration of this equipment. It also requires satisfactory completion of hands-on demonstrations of certain performance criteria. Each certification applicant must be explicitly aware of the responsibilities and the importance associated with sampling and maintenance and calibration certification, as well as the potential for civil and criminal sanctions that may apply if certified persons do not perform their duties properly. These specific requirements and issues are not part of the certification process for industrial hygienists.

Final §§ 70.202(b) and 70.203(b), like the proposal, retain the existing requirements that candidates for certification pass an MSHA-administered examination to demonstrate competency in respirable dust sampling procedures and in maintenance and calibration procedures, as appropriate. Also like the proposal, final §§ 70.202(b) and 70.203(b) add new provisions that require candidates for certification to complete an MSHA course of instruction prior to examination and certification. The instructional course requirements under final §§ 70.202(b) and 70.203(b) are consistent with the recommendation of the 1992 Coal Mine Respirable Dust Task Group.

MSHA received a number of comments on this provision. One commenter expressed support for the proposed requirement that persons complete a course of instruction prior to becoming certified. Another commenter recommended that the final rule include a provision requiring each mine to have a minimum of two persons trained in sampling at any given time.

Mine operators are in the best position to determine how many persons should be trained and certified in sampling and in maintenance and calibration to ensure the continuity of their operations given the operational demands of the mine, as well as the number of miners employed by the operator. Accordingly, the final rule does not specify how many persons that a mine operator must have trained or certified.

One commenter suggested that a single certification should permit a person to collect dust samples and perform maintenance and calibration of approved sampling devices.

Given the differences in duties between persons certified in sampling and those certified in maintenance and calibration, separate certifications are necessary.

One commenter found the exception in proposed § 70.203(b) that would allow maintenance of CMDPSU sampling head assemblies to be performed by persons certified either in sampling or maintenance and calibration to be confusing. As MSHA explained in the proposal, ''maintenance of the head assembly does not require a person to open, handle, disassemble, or reassemble the sampling device's internal components.'' As such, maintenance of the head assembly would not affect

electrical components and other intrinsic safety features that must be maintained in order for the CMDPSU to retain its approval under part 74. Therefore, the final rule, like the proposal, continues to reflect that necessary head assembly maintenance may be performed by persons certified in sampling, as well as those certified in maintenance and calibration.

Some commenters recommended a requirement that certified persons take regular refresher training. One of these commenters stated that certified persons should be required to receive training on sampling or maintenance and calibration of the CPDM every 6 months. Other commenters stated that certified persons should be retrained if they are unable to pass the recertification exam required every three years by proposed §§ 70.202(c) and 70.203(c). One of these commenters added that retraining should also be mandated when necessitated by equipment or procedural modifications. An additional commenter stated that the final rule should restrict certified persons' sampling or maintenance and calibration certification to the specific CPDM model on which the person received classroom instruction and examination.

To become certified under final §§ 70.202(b) and 70.203(b), each person seeking initial certification will have to complete both an MSHA course of instruction and pass an MSHA examination for the certification that the person is seeking. As explained in the proposal, it is essential for each person seeking initial certification in accordance with this rule to take classroom training prior to taking the MSHA competency examination. These requirements also strengthen the overall certification process. Like the proposed rule, final §§ 70.202(b) and 70.203(b) do not include provisions that would mandate periodic retaking of the applicable MSHA course of instruction once a person has received certification or has failed a subsequent competency examination. MSHA does not believe that there would be added value to require candidates for recertification to periodically retake the instructional course. They are able to review procedures and regulatory requirements on their own and will have had the benefit of regular, hands-on experience in either sampling, or maintenance and calibration procedures. Their competency will be adequately evaluated by whether they pass or fail the examination. To maintain certification in the tasks the certified person performs, every three years, a person must pass the applicable MSHA examination demonstrating competency in sampling procedures under final § 70.202(c) or competency in maintenance and calibration under final § 70.203(c). Accordingly, there is a continuing obligation that certified persons have to remain proficient in the use, handling, and/or maintenance and calibration practices of the approved device in use at their mine.

In addition, MSHA expects that any equipment or procedural modifications to the CPDM would be minor and would not necessitate requiring a certified person to repeat the instructional course. Given the expectation that CPDM design developments will be occasional and are unlikely to be drastic, there is no need to require retraining due to equipment or procedural modifications. For example, in MSHA's experience, design changes over the years to the CMDPSU, the approved respirable dust sampling device currently used in coal mines, has not necessitated limiting the person's certification to a particular CMDPSU model. Furthermore, MSHA does not anticipate technological advances in respirable dust sampling instrumentation so frequently or to such a degree that would warrant limiting certification to a particular CPDM model. MSHA understands that the current approved CPDM manufacturer offers various training opportunities for those in need of training on its products. Finally, MSHA believes that the periodic re-examinations required by final §§ 70.202(c) and 70.203(c) will ensure that certified persons are knowledgeable and maintain competency on the device in use at their particular mine. For this reason, final §§ 70.202(b) and 70.203(b) do not require persons seeking recertification to retake the courses of instruction prior to taking the periodic competency examinations required under final §§ 70.202(c) and 70.203(c).

To maintain certification, final §§ 70.202(c) and 70.203(c), like the proposal, require persons certified in dust sampling procedures or maintenance and calibration procedures to pass the applicable MSHA examination demonstrating competency in sampling procedures or maintenance and calibration procedures every three years. A certified person who fails the MSHA examination is no longer certified and is not permitted to perform the duties of a certified person. Also, a person who is certified on the effective date of the final rule will be required to retake and pass the applicable MSHA examination within three years of that date.

Commenters varied in opinion as to the need and practicality of re-examination. One commenter stated that the three-year re-examination frequency is too long a period of time, while other commenters believed it was too onerous. One of these commenters suggested that a five-year interval would be more appropriate, while another suggested allowing continuing education units as a more desirable alternative to re-examination.

After considering these comments, MSHA continues to believe that the proposed three-year re-examination interval is reasonable. MSHA recognizes the importance of routinely demonstrating, without too much passage of time, that certified persons remain competent in performing the essential skills required of them. Requiring persons to be re-examined at regular intervals as a condition of maintaining a valid certification will ensure that certified persons have a minimum threshold of proficiency at all times, as familiarity with proper procedures is integral to protecting the health of miners. To allow more than three years to pass, however, before re-testing certified persons could permit an inordinate period to elapse during which inadvertent, improper or erroneous sampling or maintenance and calibration practices might occur and go unchecked. MSHA also believes that testing more frequently than at three-year intervals could be unreasonably burdensome on operators and certified persons.

Another commenter recommended elimination of the re-examination provision. This commenter stated that certified persons should simply be permitted to sign an annual ethics statement. MSHA has not included this suggestion because merely signing an ethics statement does nothing to objectively demonstrate that a person maintains the proficiency needed to conduct respirable dust sampling or maintain and calibrate approved sampling devices. An annual self-certification pledge is akin to certifying persons for life, the very practice that MSHA has found to be deficient in ensuring that certified persons are qualified to perform the required sampling, and maintenance and calibration tasks. Certifying persons for life can result in diminished aptitude or proficiency in skills that can affect a person's competence to perform required tasks. It is absolutely critical that persons who are designated to perform dust sampling and maintenance and calibration of dust sampling equipment maintain the necessary competency to do so. Periodic re-

examination under final §§ 70.202(c) and 70.203(c) will ensure that certified persons maintain their knowledge, skills, and abilities to competently perform their duties.

Another commenter stated that it would be administratively impossible for MSHA to schedule and provide the number of re-examinations that would be required by proposed §§ 70.202(c) and 70.203(c). The commenter expressed concern that MSHA does not currently have the staff to instruct and administer tests to this many people and with such recurring frequency. Although MSHA understands the commenter's concern, the Agency will make arrangements to assemble and prepare the needed resources to carry out its administrative functions under the final rule.

Final §§ 70.202(d) and 70.203(d) are derived and clarified from the proposal. They provide that MSHA may revoke a person's certification for failing to properly carry out required sampling procedures or maintenance and calibration procedures, as appropriate. These final provisions are consistent with the Dust Advisory Committee's recommendation that MSHA consider a retraining and/or decertification procedure for certified persons who fail to perform their duties properly.

Final §§ 70.202(d) and 70.203(d) do not include the proposed provision that MSHA may revoke a person's certification for failing to pass the MSHA examination. The proposed provisions would have given MSHA discretion to revoke a person's certification for failing to pass the examination which is inconsistent with final §§ 70.202(c) and 70.203(c) which require that, to maintain certification, a person must pass the examination every three years.

MSHA received two comments on this provision. One commenter suggested that revocation should be mandatory in those cases where certified persons execute their duties improperly. MSHA has not adopted the suggestion. Because of the seriousness of decertification, each case should be judged on a case-by-case basis. In certain circumstances, decertification, or even criminal referral, may be appropriate. In other cases, however, decertification may not be warranted. In any event, it is important to permit the certified person the opportunity to present mitigating circumstances or otherwise rebut any evidence that MSHA would use in order to justify the person's decertification.

The second commenter suggested that, because MSHA seldom uses its decertification authority, MSHA should eliminate the revocation provisions. This commenter also suggested that MSHA should perform all respirable dust sampling in lieu of certifying and decertifying persons. MSHA has not adopted these suggestions. The authority to decertify a person is a significant factor in safeguarding the integrity of the sampling and maintenance and calibration processes, providing a healthful environment for miners, and maintaining miners' confidence and support for the dust program. MSHA's current decertification procedures and procedures regarding appeals of revocation are addressed in MSHA's Program Policy Letter (PPL) No. P12–V–01, March 8, 2012 (Reissue of P09–V–08—Procedures for Revoking MSHA Certifications to Take Respirable Dust Samples or to Maintain and Calibrate Approved Dust Sampling Devices). In addition, as explained elsewhere in this preamble, the responsibility to provide a safe and healthful environment for miners is primarily the operator's obligation.

Final §§ 70.202 and 70.203, like the proposal, does not include paragraph (c) in both existing §§ 70.202 and 70.203, which permit MSHA to temporarily certify a person to collect respirable dust samples or to maintain and calibrate approved sampling devices if the person has received specific instruction from an authorized representative of the Secretary. MSHA is not including the existing temporary certification provisions because MSHA's experience has been that people seek permanent certification, rather than temporary certification. MSHA received no comment on the proposed deletions of paragraphs(c) in existing §§ 70.202 and 70.203.

7. Section 70.204 Approved Sampling Devices; Maintenance and Calibration

Final § 70.204(a), like the proposal, requires that approved sampling devices be maintained as approved under 30 CFR part 74 and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers'' or in accordance with the manufacturer's recommendations, if using a CPDM.

Final paragraph (a) is similar to the proposal and clarifies that only persons certified in maintenance and calibration can perform maintenance work on ''the CPDM or the pump unit of the CMDPSU'' rather than ''the pump unit of approved sampling devices'' because the CPDM is a sealed unit. MSHA's experience with the CMDPSU is that maintenance and calibration of the pump unit requires a person to open, handle, disassemble, or reassemble the sampling device's internal components. Additionally, maintenance of the pump unit could affect the electrical components or other intrinsic safety features that must be maintained for the device to retain its approval and not become a source of possible ignition of a methane and oxygen atmosphere. Persons trained and certified in maintenance and calibration procedures on the CMDPSU have been determined to be competent and knowledgeable to properly perform pump unit maintenance on the CMDPSU. Final paragraph (a) clarifies that only persons certified in maintenance and calibration can perform maintenance on the CPDM. The CPDM is a new sampling device which is a sealed unit. To ensure proper performance of the CPDM and the integrity of the samples, it is critical that only persons trained and certified in maintenance and calibration be allowed to perform maintenance work on the CPDM.

One commenter generally supported the proposed provision; another one did not. The latter commenter questioned whether requiring maintenance and calibration be done according to the manufacturer's instructions was equivalent to open-ended incorporation by reference.

As required in other 30 CFR provisions, it is prudent and reasonable to require that the CPDM be calibrated according to manufacturer's recommendations. The CPDM is a new sampling device and the manufacturer has the knowledge and expertise to determine how the unit is to be calibrated. Maintaining the CPDM according to the manufacturer's recommendations will ensure that it is maintained as approved under 30 CFR part 74.

Final § 70.204(b) is substantially similar to proposed § 70.204(b). It requires that sampling devices be calibrated at the flowrate of 2.0 liters of air per minute (L/min) if using a CMDPSU, or at 2.2 L/min if using a CPDM, or at a different flowrate recommended by the manufacturer, before they are put into service and, thereafter, at time intervals recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS. As a clarification regarding the calibration of flowrate, final paragraph (b) includes the phrase ''if using a CMDPSU, or at 2.2 L/min if using a CPDM,'' and does not include the phrase ''or prescribed by the Secretary or Secretary of HHS for the particular device.'' Calibration is determined by approval of the sampling device based

on the performance of the unit. The manufacturer must establish, for a device meeting part 74 requirements, the flowrate that produces a sample that measures respirable coal mine dust. In addition, like the proposal, final paragraph (b) allows the time intervals between calibrations to be performed according to the manufacturer's recommendations, as well as prescribed by the Secretary or Secretary of HHS. This will allow the Secretaries to establish a different calibration schedule when necessary to address problems associated with a particular sampling unit.

One commenter understood the flowrate provision in proposed paragraph (b) to mean that the manufacturer could change the flowrate and it would change the concentration measured. MSHA clarified at a public hearing that the flowrate is recommended by the manufacturer and approved by MSHA and NIOSH. Calibration of the sampling device is done following the manufacturer's specifications, but how the sampler is used in the field to collect samples is specified by NIOSH and MSHA.

Final paragraph (c), like the proposal, requires that if a CMDPSU is used to sample, it must be examined and tested by a person certified in sampling or in maintenance and calibration within 3 hours before the start of the shift on which the approved sampling devices will be used to collect respirable dust samples. This will ensure that the sampling device is clean and in proper working condition prior to use.

One commenter suggested that the preshift check could be done anytime before the start of the shift, not within 3 hours of the shift as specified in the proposed rule.

The requirement to examine and test the CMDPSU within 3 hours before the start of the shift is consistent with MSHA's existing policy. Since the 1980s, MSHA has interpreted the language ''immediately before each sampling shift'' required by existing §§ 70.204(d), 71.204(d), and 90.204(d) as being equal to no more than 3 hours (U.S. DOL, MSHA, MSHA Policy Memorandum No. 81–17 C, 1981; U.S. DOL, MSHA Program Information Bulletin No. P09–31, 08/25/2009). The 3-hour time frame in the final paragraph (c) provides operators transparency regarding their responsibilities for testing and examining sampling devices, flexibility, and assurance that the sampling devices work effectively during the next shift. This time frame also ensures that the sampling device is not assembled and exposed for extended periods to possible contamination and mishandling on coal mine property.

The examination and testing requirements for a CMDPSU are specified in paragraphs (c)(1) through (c)(5). Final paragraphs (c)(1) through (c)(4) are identical to the proposed rule. Final paragraph (c)(1) requires a thorough examination of all components of the cyclone assembly, including the interior of the connector barrel, vortex finder, cyclone body, and grit pot, to assure that they are clean and free of dust and dirt. Final paragraph (c)(2) requires the examination of the inner surface of the cyclone body to assure that it is free of scoring or scratch marks on the inner surface of the cyclone where the air flow is directed by the vortex finder into the cyclone body. Final paragraph (c)(3) requires examination of the external hose connecting the pump unit to the sampling head assembly to assure that it is clean and free of leaks. Final paragraph (c)(4) requires examination of the clamping and positioning of the cyclone body, vortex finder, and cassette to assure that they are rigid, in alignment, firmly in contact, and airtight. Final paragraph (c)(5), like the proposal, requires testing the voltage of each battery while under actual load to assure the battery is fully charged. This requires that a fully assembled and examined sampling head assembly be attached to the pump inlet with the pump unit running when the voltage check is made. The final requirement in (c)(5) is simplified by modifying the proposed language related to CMDPSU batteries. The proposal would have required that the voltage for nickel cadmium cell batteries must not be lower than the product of the number of cells in the battery multiplied by 1.25, and the voltage for other than nickel cadmium cell batteries must not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell value. The final provision requires that the voltage for the batteries used in the CMDPSU must not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell value. This revision allows replacement batteries of different designs to be used once approved. No comments were received on paragraphs (c)(1) through (c)(5).

Final paragraph (d)(1) requires that if using a CPDM, the person certified in sampling or in maintenance and calibration must follow the pre-operational examinations, testing, and set-up procedures, and perform necessary maintenance recommended by the manufacturer to assure its operational readiness within 3 hours before the start of the shift on which the device will be used to collect respirable dust samples. Final paragraph (d)(2) requires the certified person to perform other required scheduled examinations and maintenance procedures recommended by the manufacturer.

Final paragraphs (d)(1) and (2) are similar to proposed § 70.206(b)(2), (5), and (6). Proposed § 70.206 would have provided requirements for a CPDM Performance Plan. Proposed § 70.206(b)(2), (5) and (6) would have required the approved CPDM Performance Plan to include the names or titles of the responsible mine officials who are designated by the operator and the following information: The pre-operational examinations, testing and set-up procedures to verify the operational readiness of the sampling device before each sampling shift; the routine daily and other required scheduled maintenance; and procedures or methods for verifying the calibration of each CPDM. The proposed CPDM Performance Plan has not been included in this final rule. Additional discussion is provided in § 70.206 of this preamble concerning ''Bimonthly sampling; mechanized mining units.''

One commenter on the proposed CPDM Performance Plan requirements pointed out that proposed § 70.206(b)(5) would have required scheduled maintenance procedures but that those procedures come with the CPDM from the manufacturer and should not need to be submitted to MSHA as part of a plan. MSHA agrees and has not included this operator submission requirement in the final rule. Existing § 74.10 requires that manufacturers include operating and storage instructions and a maintenance and service life plan with each new CPDM device sold. Final paragraph (d) requires that such operating, maintenance, and calibration instructions be followed. The certified person must perform scheduled examinations and maintenance procedures recommended by the manufacturer.

Furthermore, final paragraphs (d)(1) and (2) are parallel to those requirements for the CMDPSU under final paragraph (c), except the certified person needs to follow the manufacturer's specifications for sampling or for maintenance and calibrations. Mine operators are in the best position to maintain equipment, tools, and instruments that they use to comply with the Mine Act and related standards. Under the existing standards, operators are responsible for ensuring that their CMDPSUs are properly maintained, and MSHA believes

application of this practice to the CPDM is reasonable.

Final paragraph (e), like the proposal and existing standard, incorporates by reference MSHA Informational Report IR 1240 (1996) referenced in final paragraph (a) of these sections. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy is available on the MSHA Web site at *http://www.msha.gov* and may be inspected or obtained at MSHA, Coal Mine Safety and Health, 1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939 and at each MSHA Coal Mine Safety and Health District Office. Copies may be inspected 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*. No comments were received on the proposal.

8. Section 70.205 Approved Sampling Devices; Operation; Air Flowrate

Final § 70.205(a) requires that approved sampling devices be operated at the flowrate of 2.0 L/min if using a CMDPSU, or at 2.2 L/min if using a CPDM, or at a different flowrate recommended by the manufacturer. The language was changed from the proposal to be consistent with final § 70.204(b), and the language ''if using a CMDPSU, or at 2.2 L/min if using a CPDM,'' was added to the final provision.

One commenter understood the flowrate provision to mean the manufacturer could change the flowrate and this would change the concentration measured. This comment is addressed elsewhere in the preamble under § 70.204(b).

Final paragraph (b), like the proposal, requires that if a CMDPSU is used, each device be examined during each sampling shift by a person certified in sampling. Like the existing standards, the purpose of the on-shift CPDM examinations required by final paragraph (b) is to verify that the device remains in the proper location and continues to operate properly.

Final paragraph (b)(1), like the proposal, requires that the CMDPSU be examined during the second hour of a sampling shift to assure it is in the proper location, operating properly, and at the proper flowrate. It further requires that if the proper flowrate is not maintained, the certified person must make the necessary corrective adjustments. In addition, final paragraph (b)(1), similar to the proposal, provides that the examination is not required if the approved CMDPSU is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method. Proposed paragraph (b)(1) would not have required the examination if the sampling device was operated in a breast or chamber of an anthracite coal mine where only the full box mining method was used.

One commenter questioned whether the on-shift examination of the sampling device should be required for anthracite mines. Based on MSHA's experience with anthracite mines, MSHA has determined that in the full box mining method, as well as open breast and slant breast mining methods, which are used only in certain anthracite mines, there is limited space for the certified person and that conducting this examination is potentially unsafe. Under the final rule, operators of anthracite coal mines are not required to perform the examination of the sampling device during the second hour of operation when the device is operated where these mining methods are used.

Final paragraph (b)(2), like the proposal, requires that the certified person check the CMDPSU during the last hour of operation to assure that it continues to operate properly, including at the proper flowrate. This provision also requires that, if the proper flowrate is not maintained, the respirable dust sample must be transmitted to MSHA with a notation on the back of the dust data card stating that the proper flowrate was not maintained. It further requires that other events occurring during the collection of the respirable dust sample that may affect the validity of the sample, such as dropping of the sampling head assembly onto the mine floor, must be noted on the back of the dust data card. No comments were received on the proposal.

Final paragraph (c) is changed from the proposal. It is similar to proposed § 70.206(b)(1) and (7). It requires that if a CPDM is used, the person certified in sampling must monitor the dust concentrations and the sampling status conditions being reported by the CPDM at mid-shift or more frequently as specified in the approved mine ventilation plan to assure that: The sampling device is in the proper location and is operating properly; and the work environment of the occupation or DA being sampled remains in compliance with the standard at the end of the shift. The language ''status conditions'' as it relates to CPDM sampling is terminology used in the approved CPDM manufacturer's literature.

Proposed § 70.206(b)(1) and (7) relating to the proposed CPDM Performance Plan would have required identifying information on the occupations, locations, and miners being sampled, and that the designated mine official monitor the frequency with which dust concentrations are reported by the CPDM during each sampling shift. Under the proposal, monitoring intervals would have been determined, in part, based on considerations such as the occupation being monitored, geologic conditions, the location in the mine from which the sample would have been taken, production levels, past exposure levels and similarity to current conditions, and mine experience.

The majority of comments on the proposed CPDM Performance Plan stated that another mine plan was not necessary. MSHA has determined that the CPDM Performance Plan would have been duplicative of many requirements in existing mine ventilation plans. Therefore, the proposed CPDM Performance Plan is not included in the final rule. Additional discussion on the proposed CPDM Performance Plan is located under final § 70.206 of this preamble.

Final paragraph (c) is similar to proposed § 70.206(b)(7) which would have required the CPDM Performance Plan to include reasonable monitoring intervals based on the conditions at each mine. Routine monitoring of dust concentrations during the sampling shift is important. It ensures that MSHA, mine operators, and miners know the dust concentrations where samples were taken so that timely corrective action can be taken as necessary. As such, final paragraph (c) requires that when a CPDM is in use, the certified person must monitor the dust concentration being reported by the device at mid-shift or more frequently as specified in the operator's approved mine ventilation plan. Mid-shift means the middle of the shift for whatever specific shift length worked. In addition, specifying the monitoring frequency as part of the approved ventilation plan will also allow the District Manager to assess the need, if any, for more frequent monitoring of dust concentrations on a mine-by-mine basis. For example, the District Manager may require the operator to more frequently monitor dust concentrations during the shift when CPDM sampling at the DO has shown repeated overexposures.

For the same reason discussed under final paragraph (b), final paragraph (c) does not require on-shift monitoring under this section when CPDMs are

operated in certain anthracite mining operations.

9. Section 70.206 Bimonthly Sampling of Mechanized Mining Units

Final § 70.206 regarding bimonthly sampling of mechanized mining units (MMUs) is similar to proposed § 70.207 regarding sampling of MMUs when using a CMDPSU. Unlike proposed § 70.206, the final rule does not include requirements for a CPDM Performance Plan. Proposed § 70.206 would have required each operator to develop and submit for approval a CPDM Performance Plan prior to sampling with the CPDM. The Plan would have required specific information on CPDMs and approval procedures for the Plan.

MSHA received many comments on the proposed CPDM Performance Plan. The majority of comments stated that another mine plan was not necessary. MSHA has determined that the CPDM Performance Plan would have been duplicative of many of the requirements in existing mine ventilation plans. In addition, the information that is needed to ensure the proper use of a CPDM is addressed by other provisions of this final rule or will be incorporated into each operator's ventilation plan. For example, certain provisions that would have been required under the CPDM Performance Plan are included in final §§ 70.204(d)(1) and (d)(2), and 70.205(c) and are discussed elsewhere in this preamble. As many of the requirements in the proposed CPDM Performance Plan are redundant with existing mine ventilation plans and most of the requirements of this final rule, MSHA determined that the CPDM Performance Plan is unnecessary. Miners will be adequately protected by the requirements of a mine's ventilation plan and this final rule. Accordingly, the proposed CPDM Performance Plan is not included in this final rule.

The title of § 70.206 is changed from proposed § 70.207. It does not include the term ''CMDPSU'' to avoid confusion with the sampling device required for bimonthly sampling of MMUs under this section and quarterly sampling of MMUs under final § 70.208. Final § 70.201(a) addresses the required sampling devices.

Final § 70.206 includes language that bimonthly sampling of MMUs is required until January 31, 2016 . This change clarifies that bimonthly sampling ceases 18 months after the effective date of the final rule.

Final paragraph (a) is redesignated from proposed § 70.207(a) and, like the proposal, requires that each operator take five valid representative samples from the DO in each MMU during each bimonthly period. The term ''representative samples'' replaces the term ''respirable dust samples'' that is used in the existing standard. The term ''valid representative samples'' used here and throughout the preamble and rule is a short form reference to the terms ''valid respirable dust sample'' and ''representative samples.'' Requiring ''valid representative samples'' ensures that samples taken by the operator reflect typical dust concentrations and conditions at the mine during normal mining activity. MSHA received one comment on the definition of representative samples. That comment is discussed elsewhere in this preamble under § 70.2.

Paragraph (a) further requires that DO samples be collected on consecutive normal production shifts or normal production shifts each of which is worked on consecutive days. This is consistent with the existing standard. MSHA received several comments on the definition of ''normal production shift.'' Those comments are addressed elsewhere in this preamble under § 70.2.

Final paragraph (a), like the proposal, provides that the bimonthly sampling periods are: (1) January 1—February 28 (29); (2) March 1—April 30; (3) May 1—June 30; (4) July 1—August 31; (5) September 1—October 31; and (6) November 1—December 31. The bimonthly sampling periods are identical to the existing standard.

Some commenters suggested that MSHA include a provision addressing malfunctions, suspected tampering and environmental conditions that could affect measurement of respirable dust levels. These commenters stated that mine operators should not be required to commit to long-term ventilation plan approvals for short-term issues due to environmental conditions when those conditions are not representative of the normal mining conditions used in the development of ventilation plans.

Mine operators have always had the opportunity to submit information on the back of dust data cards when they knew that a respirable dust sample collected to fulfill the requirements of part 70, 71, or 90 was not representative of normal conditions. The information submitted has been and will continue to be used to determine if the sample submitted by the operator is a valid sample. To clarify the responsibilities of the certified person responsible for collecting respirable dust samples, MSHA has included requirements for the submission of information on the back of dust data cards in final §§ 70.205(b)(2), 71.205(b)(2) and 90.205(b)(2).

Final paragraph (b) is redesignated from proposed § 70.207(b) and, like the proposal, requires that unless otherwise directed by the District Manager, the DO samples must be taken by placing the approved sampling device as specified in paragraphs (b)(1) through (10) of this section. The DOs specified in paragraphs (b)(1) through (10) are unchanged from the existing standard.

On March 8, 2011, MSHA issued in the **Federal Register** a request for comments (76 FR 12648, 12650) and stated that the proposed rule addresses: (1) Which occupations must be sampled using CPDMs, and (2) which work positions and areas could be sampled using either CPDMs or CMDPSUs. MSHA solicited comments on the proposed sampling occupations and locations, and on whether there are other positions or areas where it may be appropriate to require the use of CPDMs. MSHA also requested comments on whether the proposed CPDM sampling of ODOs on the MMU is sufficient to address different mining techniques, potential overexposures, and ineffective use of approved dust controls. MSHA did not receive comments on proposed § 70.207(b).

Final § 70.206(c) is redesignated from proposed § 70.207(c). It requires that when the applicable dust standard changes in accordance with final § 70.101 (Respirable dust standard when quartz is present), the standard will become effective 7 calendar days after the date of notification of the change by MSHA. The rationale for paragraph (c) is discussed elsewhere in this preamble under § 70.208(c).

Final paragraph (c) does not include the requirements in proposed § 70.207(c)(1) and (c)(2). Proposed § 70.207(c)(1) would have required that if all samples from the most recent bimonthly sampling period do not exceed the new standard, the operator would begin sampling on the affected MMU on the first production shift during the next bimonthly period following receipt from MSHA of the change in the standard. Proposed § 70.207(c)(2) would have required that if any sample from the most recent bimonthly sampling period exceeds the new standard (reduced due to the presence of quartz), the operator would have to make necessary adjustments to the dust control parameters in the mine ventilation plan within three days, and then collect samples from the affected MMU on consecutive normal production shifts until five valid representative samples are collected. It further provided that the samples collected would be treated as normal bimonthly samples under this part.

One commenter stated that one overweight sample was not an indication of a problem and that the ventilation plan did not need to be changed when one sample was high or the average of five samples was over the concentration standard. Other commenters stated that an operator cannot make ventilation plan changes without MSHA approval and that three days was too short a time period for the operator to resubmit the ventilation plan for changes.

After reviewing the comments, MSHA has determined to not include proposed paragraphs (c)(1) and (c)(2) in the final rule. The proposal would have required additional sampling requirements before the operator became aware of the new reduced standard. For consistency between the sampling requirements of the final rule, final paragraph (c) is the same as final § 70.207(b) regarding bimonthly sampling of DAs, § 70.208(c) regarding quarterly sampling of MMUs, § 70.209(b) regarding quarterly sampling of DAs, § 71.206(b) regarding quarterly sampling, and § 90.207(b) regarding quarterly sampling.

Final paragraph (d) is redesignated from proposed § 70.207(d) and makes non-substantive changes. Like the proposal, it requires that if a normal production shift is not achieved, the DO sample for that shift may be voided by MSHA. It further requires that any sample that, regardless of production, exceeds the standard by at least 0.1 mg/m^3 must be used in the determination of the equivalent concentration for that MMU. Paragraph (d) is similar to and consistent with final § 70.208(d) regarding quarterly sampling of MMUs.

One commenter stated that it was unfair for MSHA to count a sample that was over the standard when normal production was not achieved without giving the operator some credit for a sample that was below the standard when normal production was not achieved. The commenter also stated that if production is not met on a given shift and the sample is under the standard, it is still an indication of the miner's exposure.

Final paragraph (d) ensures that respirable dust sampling is representative of the activities that occur when sampling is not being conducted and dust generation sources are active. If normal production is not achieved, the samples can be expected to reflect an unrealistically lower reading of respirable dust levels in the mine atmosphere than what would be expected during typical mining conditions at the location where the miner is working. Without normal production, an accurate determination of the effectiveness of the dust control parameters in the approved ventilation plan cannot be established. If samples collected are in compliance with the respirable dust standard when normal production levels are achieved and the ventilation plan is followed, miners have a reasonable expectation that on shifts when samples are not collected, the respirable dust levels are in compliance with the respirable dust standard. Any sample that exceeds the standard while production is less than normal should be used to determine the respirable dust concentration of the MMU since operating at a higher production would likely increase miners' respirable dust exposure even more.

The above rationale is consistent with the 1995 NIOSH Criteria Document, the 1996 Dust Advisory Committee Report, and the 1992 Coal Mine Respirable Dust Task Group Report, all of which emphasized the need for mine operators to achieve normal production levels when evaluating the respirable dust parameters contained in the approved ventilation plan.

Another commenter expressed concern that MSHA would use an overly restrictive approach in evaluating samples, adding that, in the past, MSHA refused to void samples with oversized particles if there was a specific weight gain. To illustrate, the commenter stated that a sampling device could be dropped and filled with non-respirable dust from the mine floor and MSHA would not void the sample because it had a specific weight gain.

MSHA will continue to use the criteria listed in MSHA Method P–19 for evaluating samples for oversized particles (U.S. Department of Labor, MSHA Method P–19, 2012). Samples with net weight gains greater than 1.4 mg are opened and visually inspected for oversized particles. If this examination reveals the presence of foreign materials or other abnormalities, the sample is voided as contaminated. Any sample with a net weight gain of 6.0 mg or greater is subjected to further examination. The procedures used by MSHA's Pittsburgh Safety and Health Technology Center in MSHA Method P–19 are available on request. It is the operator's responsibility to submit samples that are collected according to the requirements of Title 30 of the CFR. As stated earlier, the operator has always had the opportunity to note on the back of the dust data card events that may make a sample non-representative. MSHA has incorporated the requirements for the operator to make notations on the back of the dust data card in final §§ 70.205(b)(2), 71.205(b)(2) and 90.205(b)(2).

Another commenter suggested that the word ''may'' in the proposal ought to be changed to ''must'' in the final rule so that DO samples would always be voided if a normal production shift is not achieved. MSHA is using ''may'' instead of ''must'' to allow samples that exceed the standard to be included in the average of samples submitted to fulfill the sampling requirements of final § 70.206. If normal production levels are not achieved and the sample collected nevertheless exceeds the standard by at least 0.1 mg/m^3, MSHA will use the sample to determine the equivalent concentration.

Final paragraph (e) is similar to proposed § 70.207(g) and (i). It requires that when a valid representative sample taken in accordance with this section meets or exceeds the excessive concentration value (ECV) in Table 70–1 that corresponds to the applicable standard and particular sampling device used, the operator must: (1) Make approved respiratory equipment available; (2) Immediately take corrective action; and (3) Record the corrective actions. The actions required by paragraph (e) are similar to those in proposed § 70.207(g) and (i).

Proposed § 70.207(g) would have required that, during the time for abatement fixed in a citation, the operator: (1) Make approved respiratory equipment available to affected miners in accordance with § 72.700; (2) submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to within the standard; and (3) upon approval by the District Manager, implement the proposed corrective actions and then sample the environment of the affected occupation in the MMU in the citation on each normal production shift until five valid representative samples are taken.

Proposed § 70.207(i) would have required that when the equivalent concentration of one or more valid samples collected by the operator exceeds the standard but is less than the ECV in proposed Table 70–1, the operator would have to: (1) Make approved respiratory equipment available to affected miners in accordance with proposed § 72.700; (2) take corrective action to lower the respirable dust concentration to at or below the standard; and (3) record the corrective actions taken in the same manner as the records for hazardous conditions required by existing § 75.363.

In the March 8, 2011, request for comments (76 FR 12648), MSHA stated that the Agency received comments that

the proposed rule should not require mine operators to record corrective actions or excessive dust concentrations as § 75.363 hazardous conditions. MSHA further stated that it ''would like to clarify that the proposal would require that operators record both excessive dust concentrations and corrective actions in the same manner as conditions are recorded under § 75.363'' and that ''MSHA would not consider excessive dust concentrations or corrective actions to be hazardous conditions, since the proposed requirement is not a section 75.363 required record'' (76 FR 12650).

Some commenters supported the requirements of proposed § 70.207(i) and some did not. Most commenters stated that a 1.0 mg/m^3 dust concentration is not a hazardous condition and a single shift sample should not require an operator to take action under proposed § 70.207(i).

In response to the comments, final paragraph (e) is changed from the proposal. It does not require action if the dust sample exceeds the standard but is less than the ECV in Table 70–1. Rather, it requires an operator to take certain actions when a respirable dust sample meets or exceeds the ECV in Table 70–1. The rationale for final paragraph (e) is the same as that for final §§ 70.207(d), 70.208(e), and 70.209(c) and is discussed elsewhere in this preamble under § 70.208(e) of this preamble.

Final paragraph (e)(1), like proposed § 70.207(g)(1) and (i)(1), requires that the operator make approved respirators available to affected miners in accordance with § 72.700. Some commenters expressed concern that it is inconsistent for MSHA to allow the use of respiratory equipment after a violation of the standard, but not allow respiratory equipment during other times to control miners' exposure. Other commenters, who generally supported requiring operators to make respiratory equipment available at the miner's request, stated that respirators should not be allowed while the operator is attempting to achieve compliance with the standard.

Final paragraph (e)(1) is derived from existing § 70.300, which requires an operator to make respirators available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained. The use of approved respiratory equipment should be encouraged until the operator determines the cause of the overexposure and takes corrective actions. Additional discussion on the use of respirators to control exposure to respirable coal mine dust is elsewhere in this preamble under § 72.700.

Final paragraph (e)(2) is similar to proposed § 70.207(g)(3) and (i)(2). It requires that the operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (e)(2) is consistent with existing § 70.201(d), which requires a mine operator to take corrective action to lower the concentration of respirable dust. Paragraph (e)(2) clarifies that corrective action must be taken immediately to protect miners from overexposures.

Corrective actions include, for example, engineering or environmental controls that control the level of respirable coal mine dust by: (1) Reducing dust generation at the source with the dust controls on the mining equipment; (2) suppressing the dust with water sprays, wetting agents, foams or water infusion; (3) using ventilation to dilute the dust; (4) capturing the dust with machine-mounted dust collectors; and (5) diverting the dust being generated by the mining process with shearer clearer or passive barriers. This provision will protect miners' health because the operator will be required to review the dust control parameters and determine what factors may have contributed to the overexposure. To avoid confusion with the proposal's timeframes as to when corrective action needs to be taken, final paragraph (e)(2) requires that the action needs to be taken immediately. MSHA will assess, on a case-by-case basis, the action that must be taken immediately and the appropriate timeframe within which it must occur. For example, under circumstances involving a relatively minor correction, ''immediately'' would mean before the next shift. Under circumstances involving the purchase of additional equipment or parts, MSHA will accept a bona fide purchase order as immediate corrective action. The purchase order must show the date of purchase and expected delivery, and the equipment or part must be installed as soon as it is delivered.

Final paragraph (e)(3) is similar to proposed § 70.207(i)(3). Final paragraph (e)(3) requires the mine operator to make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners.

One commenter supported proposed § 70.207(i)(3) which would have required the mine operator to make a record of the corrective action taken in the same manner as required by existing § 75.363. Other commenters stated that the proposal was unnecessary and costly. One commenter stated that entering the corrective actions in the book of hazards sets up the operator for an unwarrantable failure order because the operator would be required to document the circumstances as a hazard and then could fail to correct the hazard if the corrective actions did not reduce the dust levels to meet the standard. Other commenters stated that examinations conducted under § 75.363 are for hazardous conditions found during the shift by the certified person conducting the examination. They further stated that hazardous conditions found during the § 75.363 examination must be corrected immediately, but any violation of the respirable dust standard cannot be corrected immediately because the overexposure is not known until after the shift is over and the District Manager must first approve the corrective action.

As stated previously, ''MSHA would not consider excessive dust concentrations or corrective actions to be hazardous conditions, since the proposed requirement is not a section 75.363 required record.'' To avoid confusion with the existing requirements at § 75.363 regarding ''Hazardous conditions; posting, correcting and recording,'' final paragraph (e) does not contain any reference to § 75.363 or the term ''hazardous conditions.'' However, the certification and record retention requirements of final paragraph (e)(3) are similar to those required for records under existing § 75.363. Under § 75.363(c), the record must be made by the certified person or verified by the certified person and must be countersigned by the mine foreman or equivalent mine official. Paragraph (e)(3) is necessary because it provides useful information to a mine operator, miners, and MSHA regarding the corrective actions taken and whether the dust control parameters in the approved ventilation plan are adequate. The record of the corrective actions taken should be made by a responsible mine official, such as the mine foreman or equivalent mine official. Records and certification of corrective action taken

help identify excessive dust concentrations so they can be addressed appropriately to better ensure miners' health. In addition, retaining records at the mine for at least one year is consistent with many existing MSHA record retention standards, particularly the proposal's incorporation of existing § 75.363(d). Record retention is necessary to help the mine operator, MSHA, and the miners' representative identify problems with dust controls and ensure that excessive dust concentrations are corrected. The cost associated with the record requirement is shown in Chapter IV of the Regulatory Economic Analysis (REA).

Unlike proposed § 70.207(g)(2), final paragraph (e) does not require the submission of corrective actions to the District Manager for approval. Comments on proposed § 70.207(g)(2) are discussed under final paragraph (h)(4).

For consistency between the sampling requirements of the final rule, final paragraphs (e)(1)–(3) are identical to final § 70.207(d)(1)–(3) regarding bimonthly sampling of designated areas, § 70.208(e)(1)–(3) regarding quarterly sampling of MMUs, § 70.209(c)(1)–(3) regarding quarterly sampling of designated areas, § 71.206(h)(1)–(3) regarding quarterly sampling, and except for conforming changes, to § 90.207(c)(1)–(3) regarding quarterly sampling.

Final paragraph (f) is redesignated and changed from proposed § 70.207(e). Paragraph (f)(1) is similar to proposed § 70.207(e) regarding sampling of MMUs when using a CMDPSU and paragraph (f)(2) is similar to proposed § 70.208(e) regarding sampling of MMUs when using a CPDM. Paragraph (f) states that noncompliance with the standard is demonstrated during the sampling period when: (1) Two or more valid representative samples meet or exceed the excessive concentration value (ECV) in Table 70–1 that corresponds to the applicable standard and particular sampling device used; or (2) The average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and particular sampling device used.

In the March 8, 2011, request for comments (76 FR 12649), MSHA stated that the Agency is interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the ECV. MSHA also requested comments on alternative actions, other than those contained in the proposal, for MSHA and the operator to take if operators use a CPDM. MSHA further stated that it is particularly interested in alternatives and how such alternatives would be protective of miners.

Many commenters expressed concern that compliance determinations would be made on the basis of a single-shift measurement. Proposed § 70.207(e) would have required that when using a CMDPSU, no valid single-shift sample equivalent concentration meet or exceed the ECV that corresponds to the applicable standard in proposed Table 70–1.

In response to comments, final paragraph (f) provides two different methods by which compliance determinations can be made. The rationale for final paragraphs (f)(1) and (2) is the same as that for final §§ 70.207(e)(1) and (2), 70.208(f)(1) and (2), 70.209(d)(1) and (2), 71.206(i)(1) and (2), and 90.207(d)(1) and (2), and is discussed elsewhere in this preamble under § 70.208(f)(1) and (2).

For consistency between the sampling requirements of the final rule, final paragraphs (f)(1) and (2) are the same as final §§ 70.207(e)(1) and (2), 70.208(f)(1) and (2), 70.209(d)(1) and (2), and, except for conforming changes, final §§ 71.206(i)(1) and (2), and 90.207(d)(1) and (2).

Comments on the ECVs in proposed Table 70–1 are discussed elsewhere in this preamble under § 70.208(f). In addition, a detailed discussion on the derivation of the ECVs in both final Tables 70–1 and 70–2 is included in Appendix A of the preamble. Comments that questioned the accuracy of a single sample in making a compliance determination are addressed elsewhere in this preamble under § 72.800.

Final paragraph (g) is changed and redesignated from proposed § 70.207(f). It requires that unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard involving a DO in an MMU, paragraph (a) of this section will not apply to that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

Final paragraph (g) includes an exception to allow the District Manager flexibility to address extenuating circumstances that would affect sampling. An example of extenuating circumstances would occur when an uncorrected violation would require abatement sampling that continues into the next sampling period.

In addition, final paragraph (g) clarifies that a violation must be abated and the citation must be terminated, in accordance with final paragraphs (h) and (i), before resuming bimonthly sampling. Final paragraphs (h) and (i) are discussed below. Final paragraph (g) is similar to existing § 70.207(c). MSHA did not receive comments on the proposal.

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (g) is the same as final §§ 70.207(f), 70.208(g), § 70.209(e), 71.206(j), and 90.207(e).

Final paragraph (h) is redesignated from and is similar to proposed § 70.207(g). It requires that upon issuance of a citation for violation of the standard, the operator must take the following actions sequentially: (1) Make approved respiratory equipment available; (2) immediately take corrective action; (3) record the corrective actions; and (4) conduct additional sampling. The actions required by paragraph (h) are similar to those in proposed § 70.207(g)(1)–(3) and (i)(3) discussed under final paragraph (e). Paragraph (h) includes the term ''sequentially'' to ensure that corrective actions are taken in the order they are listed.

Final paragraph (h)(1), like proposed § 70.207(g)(1), requires that the mine operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Comments on proposed § 70.207(g)(1), together with the rationale for final paragraph (h)(1), are discussed under final paragraph (e).

Final paragraph (h)(2) is similar to proposed § 70.207(g)(3). It requires that the operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (h)(2) is similar to proposed § 70.207(g)(3) which would have required a mine operator to implement the proposed corrective actions. The types of corrective actions that could be taken are discussed under paragraph (e)(2). The rationale for final paragraph (h)(2) is the same as that for final paragraph (e)(2). As explained for final paragraph (e)(2), in the event of extenuating circumstances in which corrective actions cannot be taken immediately, i.e., the corrective action involves the purchase of additional equipment or parts, MSHA will accept a bona fide purchase order as immediate corrective action. The purchase order must show the date of purchase and expected delivery, and the equipment or part must be installed as soon as it is delivered. Under those circumstances, MSHA will extend the timeframe in which additional sampling is to begin in accordance with paragraph (h)(4).

Final paragraph (h)(3) is similar to proposed § 70.207(i)(3) and is the same

as final paragraph (e)(3). It requires that the operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. Comments on proposed § 70.207(i)(3) and the rationale for paragraph (h)(3) are discussed under paragraph (e)(3).

Final paragraph (h)(4) is similar to proposed § 70.207(g)(3). It requires that the mine operator begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected occupation in the MMU on consecutive normal production shifts until five valid representative samples are taken. Paragraph (h)(4) is consistent with existing § 70.201(d), which requires a mine operator to sample each production shift until five valid respirable dust samples are taken. In addition, it requires that the sampling must begin within 8 calendar days after the issuance of the citation. The 8 calendar days allow sufficient time for the operator to receive the citation and take corrective actions. Under proposed § 70.207(g)(2) and (3), sampling would have begun after submission to and approval by the District Manager of the corrective actions taken.

One commenter stated that the proposal is unfair to mine operators because MSHA Districts will not be able to process corrective action submissions in a timely manner. The commenter also stated that the requirement is too burdensome because it could result in many needless revisions to the ventilation plan by mine operators and that the approved corrective actions could be different from what is approved in the mine ventilation plan.

In response to the comments, final paragraph (h) does not include the proposed requirement that the operator submit corrective actions to the District Manager for approval before corrective action can be taken. In reevaluating the requirements of proposed § 70.207(g), MSHA determined that final paragraph (h) will allow for faster abatement of a citation because immediate action must be taken to correct the violation. The sampling conducted under paragraph (h)(4) will ensure that the corrective actions taken by the mine operator are effective in lowering the concentration of respirable dust to at or below the standard. However, to ensure that the sampling begins promptly after the operator implements the corrective actions, paragraph (h)(4) clarifies that the sampling must begin within 8 calendar days after the date the citation is issued.

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (h) is the same as final §§ 70.207(g), 70.208(h), 70.209(f), 71.206(k), and 90.207(f).

Final paragraph (i) is redesignated from and is substantially similar to proposed § 70.207(h). Paragraph (i) contains nonsubstantive and organizational changes from the proposal. It provides that a citation for a violation of the standard will be terminated by MSHA when: (1) Each of the five valid representative samples is at or below the standard; and (2) the operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan that applies to the MMU in the citation, and the changes have been approved by the District Manager. It further provides that the revised parameters must reflect the control measures used by the operator to abate the violation.

Some commenters expressed concern with the proposed requirement that all five of the operator's samples must be at or below the standard for terminating a citation.

Requiring that each sample be at or below the standard provides MSHA with a stronger indication that the corrective actions were effective in continuously maintaining the average respirable dust levels in the mine atmosphere during each shift to which each miner in the active workings is exposed.

Several commenters stated coal mines should not be required to commit to long-term ventilation plan approvals for short-term issues particularly when those conditions are not representative of normal mining conditions when considering the development of ventilation plans.

The final rule, like the existing standards, requires that each operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed at or below the respirable dust standard. Like the existing standards, the revisions to the dust control parameters that are required to be submitted to MSHA by the operator under the final rule are parameters that the operator believes will result in compliance with the dust standard. If the operator encounters conditions where the existing dust control parameters are not effective in controlling the dust levels to at or below the respirable dust standard, the operator must adjust the dust control parameters as necessary to control the dust concentrations to at or below the standard.

Several commenters stated that submission of a change to the mine's approved ventilation plan is unfair and burdensome to mine operators. These commenters stated that the plan approval process places mine operators at a disadvantage because MSHA can shut down the MMU if the Agency does not get exactly what it wants and it is almost impossible for a mine operator to get an expedited hearing. They also stated that the proposal can result in considerable downtime for production because MSHA does not have the personnel to review and process revisions to the ventilation plans. They further stated that requiring different dust control parameters for each MMU creates a paperwork burden for mine operators and MSHA.

Mine ventilation plans are a long recognized means for addressing safety and health issues that are mine-specific. Individually tailored plans, with commonly accepted practices, are an effective method of regulating such complex matters as dust control. Existing § 75.370, regarding the submission and approval of mine ventilation plans, requires that each mine operator develop and follow a ventilation plan that is approved by MSHA and that is designed to control methane and respirable dust in the mine. Section 75.370 further requires that the plan be suitable to the conditions and mining system at the mine. It establishes the procedures for submittal, review, and approval of the plan to ensure that the plan for each mine addresses the conditions in that mine.

Requiring revisions to the dust control parameters as part of the mine ventilation plan for the MMU in the citation provides the necessary latitude to address the diversity of mining conditions found in coal mines nationwide. Details must be shown in the plan and must be specific to the conditions at each MMU. The paperwork burden associated with final paragraph (i) is shown in Chapter VIII of the REA.

MSHA is committed to the timely processing of plan revisions. The

Agency believes that the plan approval system will not result in considerable downtime for operators while MSHA reviews the plans. Circumstances that require expedited action are handled by the District Manager on a case-by-case basis. Generally, the District Manager is guided by whether the condition, if uncorrected, could result in a health or safety hazard or an imminent stoppage of production in the mine or an area of the mine. In addition, a mine operator may take action necessary to abate an imminent danger or hazardous condition, or to safeguard persons and equipment. In order to take such action, the operator would have to make a determination of the cause of the problem.

For consistency with the sampling requirements of the final rule, except for conforming changes, final paragraphs (i)(1) and (2) are the same as final §§ 70.207(h)(1) and (2), 70.208(i)(1) and (2), and 70.209(g)(1) and (2).

10. Section 70.207 Bimonthly Sampling; Designated Areas

Final § 70.207 is new, but is consistent with existing standards. It requires bimonthly sampling of DAs until January 31, 2016, which is 18 months after the effective date of the final rule. This section is included in the final rule to make the bimonthly sampling period for Designated Areas (DAs) the same as the bimonthly sampling period for MMUs under § 70.206. It is similar to proposed § 70.207 regarding bimonthly sampling of MMUs when using a CMDPSU, proposed § 70.208 regarding quarterly sampling of MMUs when using a CPDM, and proposed § 70.209 regarding quarterly sampling of DAs when using either a CMDPSU or CPDM. It is consistent with existing § 70.207 which requires bimonthly sampling of MMUs and existing § 70.208 which requires bimonthly sampling of DAs.

The proposal would have required that DAs be sampled quarterly and MMUs be sampled bimonthly on the effective date of the rule. Under the final rule, both MMUs under § 70.206 and DAs under this § 70.207 will continue the existing bimonthly sampling frequency and the existing number of required samples for a period of 18 months following the effective date of the rule. On February 1, 2016, quarterly sampling under §§ 70.208 for MMUs and 70.209 for DAs is required. This preserves the status quo for the first 18 months in order to provide operators time to concentrate on sampling changes related to full-shift sampling and taking representative samples, as that term is defined in final § 70.2. It also allows them more time to establish procedures for a new sampling frequency, and to upgrade existing controls, or to take additional measures to meet the increase in samples required after the 18-month period. Final § 70.201(b) addresses the sampling devices required for bimonthly sampling of DAs under this provision and for quarterly sampling of DAs under final § 70.209.

Final paragraph (a) is similar to proposed § 70.207(a) concerning bimonthly sampling of MMUs. It requires that each operator take one valid representative sample from each designated area (DA) on a production shift during each bimonthly period. Except for conforming changes, the periods for bimonthly sampling of DAs in paragraph (a) are the same as those in existing § 70.208(a). The bimonthly periods are: (1) February–March 31; (2) April 1–May 31; (3) June 1–July 31; (4) August 1–September 30; (5) October 1–November 30; and, (6) December 1–January 31.

Final paragraph (b) is similar to proposed §§ 70.207(c), 70.208(c), and 70.209(b) concerning when the respirable dust standard is changed when quartz is present. It requires that when the respirable dust standard is changed in accordance with § 70.101, the new standard will become effective 7 calendar days after the date of the notification of the change by MSHA. Paragraph (b) is essentially the same as existing §§ 70.207(b) and 70.208(b), but includes a clarification on the effective date of the new standard when there is a change in the applicable standard. The rationale for final paragraph (b) is the same as that for final § 70.208(c) and is discussed elsewhere in this preamble under § 70.208(c).

For consistency in the sampling requirements of the final rule, paragraph (b) is identical to § 70.206(c) regarding bimonthly sampling of MMUs, § 70.208(c) regarding quarterly sampling of MMUs, § 70.209(b) regarding quarterly sampling of DAs, § 71.206(b) regarding quarterly sampling, and § 90.207(b) regarding quarterly sampling.

Final paragraph (c) is essentially the same as existing § 70.208(c). It requires that upon notification from MSHA that any valid sample taken from a DA to meet the requirements of paragraph (a) of this section exceeds the standard, the operator must take five valid representative samples from that DA within 15 calendar days. It further requires that the operator must begin sampling of the DA on the first day on which there is a production shift following the day of receipt of notification. As stated previously, final paragraph (c) preserves the status quo for the first 18 months following the effective date of the final rule.

Final paragraph (d) is similar to proposed §§ 70.207(i)(1)–(3) and (g)(1)–(3). Final paragraph (d) requires that when a valid representative sample taken in accordance with this section meets or exceeds the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used, the operator must: (1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter; (2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and (3) Make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. Paragraph (d)(3) further requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It also requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners.

The rationale for final paragraphs (d)(1)–(3) is the same as that for final §§ 70.206(e)(1)–(3), 70.208(e)(1)–(3), and 70.209(c)(1)–(3), and is discussed elsewhere in this preamble under final § 70.208(e)(1)–(3).

For consistency between the sampling requirements of the final rule, final paragraphs (d)(1)–(3) are the same as final § 70.206(e)(1)–(3) regarding bimonthly sampling of MMUs, § 70.208(e)(1)–(3) regarding quarterly sampling of MMUs, § 70.209(c)(1)–(3) regarding quarterly sampling of designated areas, § 71.206(h)(1)–(3) regarding quarterly sampling, and except for conforming changes, § 90.207(c)(1)–(3) regarding quarterly sampling.

Final paragraph (e) provides two different methods by which compliance determinations can be made. Paragraphs (e)(1) and (2) provide that noncompliance with the standard is demonstrated during the sampling period when: (1) Two or more valid representative samples meet or exceed the ECV in final Table 70–1 that corresponds to the applicable standard and the particular sampling device used; or (2) The average for all valid

representative samples meets or exceeds the ECV in final Table 70–2 that corresponds to the applicable standard and the particular sampling device used. Paragraph (e)(1) is similar to proposed §§ 70.207(e), 70.208(d), and 70.209(c) regarding compliance based on a single sample measurement. Paragraph (e)(2) is similar to proposed § 70.208(e) regarding weekly permissible accumulated exposure. The rationale for final paragraphs (e)(1) and (2) is the same as that for final §§ 70.206(f)(1) and (2), 70.208(f)(1) and (2), and 70.209(d)(1) and (2), and is discussed elsewhere in this preamble under § 70.208(f)(1) and (2).

For consistency between the sampling requirements of the final rule, final paragraphs (e)(1) and (2) are the same as final §§ 70.206(f)(1) and (2), 70.208(f)(1) and (2), 70.209(d)(1) and (2), and, except for conforming changes, 71.206(i)(1) and (2), and, 90.207(d)(1) and (2).

Final paragraph (f) is derived and changed from proposed § 70.209(d). It requires that unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard, paragraph (a) of this section will not apply to that DA until the violation is abated and the citation is terminated in accordance with paragraphs (g) and (h) of this section. Final paragraphs (h) and (i) are discussed below.

Final paragraph (f) includes an exception to allow the District Manager flexibility to address extenuating circumstances that would affect sampling. An example of extenuating circumstances would occur when an uncorrected violation would require abatement sampling that continues into the next sampling period.

Final paragraph (f) is similar to existing § 70.208(d). MSHA did not receive comments on the proposal.

In addition, for consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (f) is the same as final §§ 70.206(g), 70.208(g), 70.209(e), 71.206(j), and 90.207(e).

Final paragraph (g) is similar to proposed §§ 70.207(i)(3) and 70.209(e). It requires that upon issuance of a citation for a violation of the standard, the operator must take the following actions sequentially: (1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter; (2) immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; (3) make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. Paragraph (g)(3) further requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It also requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners.

Paragraph (g)(4) requires that the operator must begin sampling within 8 calendar days after the date the citation is issued, the environment of the affected DA on consecutive normal production shifts until five valid representative samples are taken. In addition, paragraph (g) includes the term ''sequentially'' to ensure that corrective actions are taken in the order they are listed.

The rationale for final paragraphs (g)(1)–(4) is the same as that for final §§ 70.206(h)(1)–(4), 70.208(h)(1)–(4), and 70.209(f)(1)–(4), and is discussed elsewhere in this preamble under § 70.206(h)(1)–(4).

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraphs (g)(1)–(4) are the same as final § 70.206(h) regarding bimonthly sampling of MMUs, § 70.208(h) regarding quarterly sampling of MMUs, § 70.209(f) regarding quarterly sampling of designated areas, § 71.206(k) regarding quarterly sampling, and § 90.207(f) regarding quarterly sampling.

Final paragraph (h) is similar to proposed § 70.209(f). It provides that MSHA will terminate a citation for a violation of the standard when the conditions listed in paragraphs (1) and (2) are met. Paragraph (h)(1) requires that each of the five valid representative samples taken must be at or below the standard. Paragraph (h)(2) requires that the operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan for the DA in the citation, and the changes have been approved by the District Manager. It further requires that the revised parameters reflect the control measures used by the operator to abate the violation. The rationale for final paragraphs (h)(1) and (2) is discussed elsewhere in this preamble under § 70.206(i).

For consistency between the sampling requirements of the final rule, final paragraphs (h)(1) and (2) are identical, except for conforming changes, to final §§ 70.206(i)(1) and (2), 70.208(i)(1) and (2), and 70.209(g)(1) and (2).

11. Section 70.208 Quarterly Sampling; Mechanized Mining Units

Final § 70.208, like the proposal, addresses sampling of mechanized mining units (MMUs). To be consistent with final § 70.201(a), it includes a clarification that the sampling requirements of this section start on February 1, 2016, which is 18 months after the effective date of the final rule. The title of the section is changed from the proposal by adding ''quarterly'' to distinguish the required sampling periods for MMUs under this section from final § 70.206, which requires bimonthly sampling for MMUs. It also does not include the term ''CPDM'' to avoid confusion with the sampling device required. Specifically, in accordance with final § 70.201(a), the operator is required to take quarterly samples of the DO and ODO in each MMU with an approved CPDM on February 1, 2016, unless directed by the Secretary to use the CMDPSU to collect quarterly samples.

Final paragraphs (a)(1) and (2) are changed from the proposal. Paragraph (a)(1) requires the mine operator to sample each calendar quarter: The designated occupation (DO) in each MMU on consecutive normal production shifts until 15 valid representative samples are taken. It further provides that the DM may require additional groups of 15 valid representative samples when information indicates that the operator has not followed the approved ventilation plan for any MMU.

Final paragraph (a)(2) requires that the operator sample each calendar quarter: Each other designated occupation (ODO) specified in paragraphs (b)(1) through (10) of this section in each MMU or specified by the District Manager and identified in the approved mine ventilation plan on consecutive normal production shifts until 15 valid representative samples are taken. It also requires sampling of each ODO type to begin after fulfilling the sampling requirements of paragraph (a)(1) of this section. It further requires that when the operator is required to sample more than one ODO type, each ODO type must be sampled over separate time periods during the calendar quarter.

Final paragraph (a)(3) is redesignated from proposed § 70.208(a)(2). It establishes the quarterly periods as: (1) January 1–March 31; (2) April 1–June 30; (3) July 1–September 30; and (4) October 1–December 31.

On March 8, 2011, MSHA issued in the **Federal Register** a request for comments (76 FR 12648). MSHA stated that the proposed rule addresses the frequency of respirable dust sampling when using a CPDM, and MSHA solicited comments on the proposed sampling frequencies and any suggested alternatives. MSHA asked if sampling of DOs were less frequent than proposed, what alternative sampling frequency would be appropriate. MSHA also requested that commenters address a sampling strategy in case of noncompliance with the respirable dust standard and provide a rationale for the strategy. In addition, MSHA asked whether CPDM sampling of ODOs should be more or less frequent than 14 calendar days each quarter, and whether the proposed CPDM sampling of ODOs on the MMU is sufficient to address different mining techniques, potential overexposures, and ineffective use of approved dust controls. Some commenters suggested that MSHA conduct the DO sampling on all shifts on which coal is produced during a calendar week. Several commenters opposed the proposed frequency of DO sampling, which would have required mine operators who use CPDMs to sample the DO in each MMU during each production shift, 7 days per week (Sunday through Saturday), 52 weeks per year. These commenters stated that the proposal was too expensive because it would require mine operators to purchase an unreasonably large number of CPDMs due to the number of MMUs in each mine. Some commenters stated that sampling every DO on every production shift was excessive and was not needed to objectively determine miners' exposure.

One commenter stated that proper control of respirable coal mine dust to below the standard will not assure operators that they will not be issued a violation for false overexposures due to the proposed sampling strategy and use of 24/7 continuous sampling on all shifts. Some commenters suggested that a miner should be allowed to request additional sampling not already designated for sampling by MSHA if the miner has reason to believe that miners are being exposed to excessive respirable dust. Another commenter suggested that the sampling should be a full-shift weekly dose not to exceed an average of 2.0 mg/m^3 for a 40-hour week.

One commenter stated that the proposed frequency of ODO sampling was confusing. This commenter stated that the proposal, which would have required sampling of ODOs in each MMU during each production shift for 14 consecutive days during each quarterly period, could not be accomplished because ODO personnel do not work 14 consecutive days. Another commenter suggested that ODOs should be sampled the same as DOs, 7 days a week, 52 weeks a year.

After considering all the comments, and based on MSHA's years' of experience, MSHA concludes that sampling on consecutive normal production shifts until 15 valid representative samples are taken is sufficient to provide samples that are representative of normal mining activities for DOs and ODOs during the production shifts. The proposal would have required sampling of ODOs in each MMU during each production shift for 14 consecutive days during each quarterly period. The 14-day period was intended to indicate the completion of multiple mining cycles. Subsequent to the proposal, MSHA surveyed its coal districts and found that, under normal mining conditions, the majority of MMUs should be able to complete at least two complete mining cycles while 15 representative samples are collected. A mining cycle consists of cutting straight entries and crosscuts or multiple passes with a longwall shearer in 15 shifts. If the mine produces coal on only one shift a day, the sampling period for a DO or ODO could be 15 consecutive normal production days. The sampling period for a DO or ODO could be as short as 8 consecutive normal production days, if the mine produces coal on two shifts a day. Sampling in accordance with paragraphs (a)(1) and (2) will provide representative measurements of respirable dust concentrations in the DO and ODO's work environment and allow both the operator and MSHA to evaluate the effectiveness of the dust controls being used. Accordingly, MSHA determined that DO sampling on every shift, every day, by each mine operator as proposed is not necessary. Miners will be adequately protected by the sampling requirements of paragraphs (a)(1) and (2) because the sampling results will provide mine operators with information to evaluate the dust controls specified in their approved ventilation plan and determine whether the controls are being maintained. As long as dust controls are properly maintained to ensure continuing compliance with the respirable dust standard, miners will be protected from overexposures.

If information indicates that a mine operator has not followed the approved mine ventilation plan for any MMU, (for example, mining when the ventilation curtains are not properly maintained, or water sprays are operated with inadequate pressure or some are inoperable), paragraph (a)(1) provides that the District Manager may require additional sampling of DOs by that operator. The additional sampling under paragraph (a)(1) is intended to ensure that miners are provided adequate protection from overexposure to respirable coal mine dust without requiring all mine operators to sample DOs each production shift, 7 days per week, 52 weeks per year as proposed.

Paragraph (a)(2) does not permit sampling of ODOs until after sampling of DOs under paragraph (a)(1) is completed. However, additional sampling of the DO, such as abatement sampling, will not affect the ODO sampling required under this paragraph (a)(2). Paragraph (a)(2) also does not permit simultaneous sampling of multiple ODO types. In doing so, paragraphs (a)(1) and (2) establish monitoring that protects miners through a longer period of sequential sampling. Sequentially sampling the DOs and ODOs spreads the sampling over a period that will ensure sufficient representative samples. Under paragraph (a)(2), sampling of a specific ODO, such as a shuttle car operator, will require all shuttle car operators on an MMU to be sampled during the same time period until the 15 representative samples are collected on each ODO. Sampling of the shuttle car operator cannot begin until sampling of the DO under paragraph (a)(1) is completed. For example: an MMU has a DO, and the following ODOs: One return air side roof bolting machine operator and two shuttle car operators. The DO is sampled until 15 representative samples are collected. Once the DO sampling is completed, then the return air side roof bolting machine operator is sampled until 15 representative samples are collected. When sampling of the roof bolting machine operator is completed, the 2 shuttle car operators are both sampled until 15 representative samples are collected on each. The shuttle car operators must be sampled at the same time so both shuttle car operators are carrying sampling units over the same time period.

The final rule's alternatives to the proposed sampling requirements for DOs and ODOs described above significantly reduce the quantity of CPDMs that operators will need to conduct MMU sampling. The proposal would have required sampling of DOs every shift, every day, and sampling of ODOs 14 consecutive days each quarter. Under the final rule, DOs are sampled less frequently than under the proposed rule, and under the final rule's

sequential sampling, DOs are sampled first, followed by sampling each ODO type over separate time periods. This sequential sampling allows a mine operator to use the same CPDM to conduct most MMU sampling.

Final paragraph (b) is similar to the proposal and requires that unless otherwise directed by the District Manager, the approved sampling device must be worn by the miner assigned to perform the duties of the DO or ODO specified in paragraphs (b)(1) through (b)(10) of this section or by the District Manager for each type of MMU. Depending on mine or physical conditions (e.g., mining height, no operating cab on the mining equipment to attach the sampling unit), the District Manager may designate an alternate sampling location than specified in paragraph (b). Paragraph (b) includes the term ''an approved sampling device'' as a clarification. Under the final rule, an operator is required to take quarterly samples of DOs in each MMU with an approved CPDM, unless directed by the Secretary to use the CMDPSU.

Paragraphs (b)(1) through (10) are substantially similar to the proposal. They identify the DOs that are required to be sampled under paragraph (a)(1) and the ODOs that are required to be sampled under paragraph (a)(2) for each specified MMU.

Paragraph (b)(1), like the proposal, requires that on a conventional section using a cutting machine, the DO on the MMU is the cutting machine operator.

Paragraph (b)(2), like the proposal, requires that on a conventional section blasting off the solid, the DO on the MMU is the loading machine operator.

Paragraph (b)(3) is changed from the proposal. It requires that on a continuous mining section other than auger-type, the DO on the MMU is the continuous mining machine operator or mobile bridge operator when using continuous haulage. The ODOs for this type of MMU are revised as follows: The roof bolting machine operator who works nearest the working face on the return air side of the continuous mining machine; the face haulage operators on MMUs using blowing face ventilation; the face haulage operators on MMUs ventilated by split intake air (''fishtail ventilation'') as part of a super-section; and the face haulage equipment operators where two continuous mining machines are operated on an MMU. The term ''shuttle car'' in the proposed rule is replaced with ''face haulage'' in the final rule. This clarifies the Agency's intent that any type of haulage on the MMU in this mining situation is required to be monitored for respirable dust exposure in the environment of the face haulage operator. The proposal used the most common haulage vehicle—shuttle car—when the intent was to cover all haulage operators including those on shuttle cars, ramcars, scoops, etc. Moreover, the proposal provided that the District Manager had the discretion to designate ODOs other than those specifically listed in proposed § 70.208(b). Face haulage operators are included in final paragraph (b)(3) because they frequently experience exposure to high dust levels. For example, some operators have two continuous mining machines on a single MMU but do not operate them at the same time. Starting operation of the second continuous mining machine after the first continuous mining machine stops mining subjects the MMU face haulage operators to respirable dust that has not cleared the entries of the MMU. Historically, mine operators who use a common dumping point for two MMUs will use face haulage equipment from either MMU as needed. Creating ODOs on face haulage equipment operators for this type of mining configuration will provide better protection from exposures to respirable dust for face haulage equipment operators. Finally, face haulage operators are included in final paragraph (b)(3) in response to comments on proposed § 75.332(a)(1), which would have required mine operators to provide separate intake air to each MMU on each working section. Comments on proposed § 75.332(a)(1) regarding split intake ventilation are discussed elsewhere in this preamble under § 75.332.

Paragraph (b)(4), like the proposal, requires that on a continuous mining section using auger-type machines, the DO on the MMU is the jacksetter working nearest the working face on the return air side of the continuous mining machine.

Paragraph (b)(5), like the proposal, requires that on a scoop section using a cutting machine, the DO on the MMU is the cutting machine operator.

Paragraph (b)(6), like the proposal, requires that on a scoop section blasting off the solid, the DO on the MMU is the coal drill operator.

Paragraph (b)(7), like the proposal, requires that on a longwall section, the DO on the MMU is the longwall operator working on the tailgate side of the longwall mining machine. The ODOs are the jacksetter who works nearest to the return air side of the longwall working face, and the mechanic.

Paragraph (b)(8), like the proposal, requires that on a hand loading section with a cutting machine, the DO on the MMU will be the cutting machine operator.

Paragraph (b)(9), like the proposal, requires that on a hand loading section blasting off the solid, the DO on the MMU will be the hand loader exposed to the greatest dust concentration.

Paragraph (b)(10), like the proposal, requires that on anthracite mine sections, the DO on the MMU will be the hand loader exposed to the greatest dust concentration.

In the March 8, 2011, request for comments (76 FR 12650), MSHA stated that the proposed rule addresses: (1) Which occupations must be sampled using CPDMs, and (2) which work positions and areas could be sampled using either CPDMs or CMDPSUs. MSHA solicited comments on the proposed sampling occupations and locations. For example, MSHA requested comment on whether there are other positions or areas where it may be appropriate to require the use of CPDMs. MSHA also asked whether the proposed CPDM sampling of ODOs on the MMU is sufficient to address different mining techniques, potential overexposures, and ineffective use of approved dust controls.

Some commenters stated that individual occupations with the highest potential for exposure should be sampled and MSHA should evaluate and determine if additional occupations need to be sampled. The final rule is based on historical sampling data on MMUs. The DOs and ODOs included in paragraphs (b)(1) through (10) are those occupations with the highest potential for exposure. Therefore, sampling these DOs and ODOs is the most effective method for protecting all miners from excess exposure to respirable coal mine dust.

One commenter expressed concern over giving the District Manager too much discretion in determining the ODOs to sample because the rules could change every time a determination was made by the District Manager. In response, MSHA notes that allowing the District Manager to identify ODOs is consistent with MSHA's existing policy concerning the designation of sampling entities under the existing standards for DAs and will continue to be based on MSHA's historical sampling data on MMUs.

One commenter recommended that if a mine operator must sample shuttle car operators on blowing type face ventilation, then shuttle car operators on exhausting type face ventilation should be sampled also. From MSHA's sampling experience, haulage operators working with exhausting face

ventilation position themselves in intake air when coal is being loaded by the continuous mining machine. By positioning themselves in this manner, the haulage operators are in a more protected environment during the time of greatest potential for exposure to respirable dust.

One commenter stated that other outby areas should be sampled such as conveyor belt entries, belt heads, and dumping points. MSHA recognizes that dust concentrations in the active workings of the mine can vary from location to location, even within a small area near a miner. MSHA will continue to require operator sampling of outby DAs. The requirements for DA sampling are contained in final §§ 70.207 and 70.209, which are discussed elsewhere in this preamble. Limiting the dust concentration in outby areas ensures that no miner in the active workings will be exposed to excessive respirable dust.

Final paragraph (c) is similar to proposed § 70.208(c) and clarifies the time frame for implementation when there is a change in the applicable standard. It requires that when the respirable dust standard is changed in accordance with § 70.101 (Respirable dust standard when quartz is present), the new standard will become effective 7 calendar days after the date of the notification of the change by MSHA. The ''date of notification'' is the date on the data mailer that MSHA currently sends, via U.S mail, to operators informing them of the quartz analyses that may result in a change in the respirable dust standard. Under proposed § 70.208(c), a new standard would have gone into effect on the first production shift following the operator's receipt of notification that the respirable dust standard is changed in accordance with § 70.101. However, MSHA may not always know the date that the operator received the notification. By allowing the new standard to become effective 7 days after the date of the notification of the change, i.e., the date on the data mailer, instead of requiring the standard to become effective on the next production shift, MSHA will maintain the existing, historical practice of providing 7 days for mailing before the new standard is effective. It protects miners by ensuring the prompt implementation of the reduced standard when high concentrations of quartz are present and also allows for a uniform application of a new respirable dust standard regardless of the physical location of a mine.

Final paragraph (d) is new. It is similar to proposed § 70.207(d) and existing § 70.207(d) regarding bimonthly sampling in mechanized mining units. It requires that if a normal production shift is not achieved, the DO or ODO sample for that shift may be voided by MSHA. It further provides that any sample that, regardless of production, exceeds the standard by at least 0.1 mg/m^3 will be used in the determination of the equivalent concentration for that occupation.

Proposed § 70.207(d), concerning sampling of MMUs with a CMDPSU, provided that if a normal production shift is not achieved, the DO sample for that shift may be voided by MSHA. It further provided that any sample, regardless of production, that exceeds the standard by at least 0.1 mg/m^3 would be used to determine the equivalent concentration for that MMU. As explained in the preamble for proposed § 70.207(d), voiding samples that indicate miners were exposed to a concentration of respirable dust in excess of the standard does not provide miners the intended health protection. For example, an MMU is on a reduced standard of 0.5 mg/m^3 due to the presence of quartz. A sample taken on the MMU when a normal production shift was not achieved shows the respirable dust concentration is 2.3 mg/m^3. The existing standard provides that any sample, regardless of production, with a concentration greater than 2.5 mg/m^3 will be used to determine the average concentration. Under the existing standard, the 2.3 mg/m^3 sample would not be used to determine the average concentration for the MMU. However, MSHA believes that any sample that exceeds the standard while production is less than normal should be used to determine the respirable dust concentration of the MMU since operating at a higher production would likely increase miners' respirable dust exposure (75 FR 64432, October 19, 2010).

The 2.5 mg/m^3 value in the existing standard was based on: (1) An earlier sampling and processing methodology that was less accurate than the existing program; (2) a 2.0 mg/m^3 standard; and (3) did not take quartz into consideration. However, the accuracy of the CPDM and the improvement in the accuracy of the CMDPSU has allowed MSHA to establish the final 0.1 mg/m^3 value, which also takes into consideration the reduced standard due to quartz.

Under proposed § 70.208 concerning sampling of MMUs with a CPDM, the level of coal production would not have been a concern because the proposal would have required sampling on each production shift, 7 days per week, and 52 weeks per year, regardless of production. Because compliance under the proposed rule would have been based on 24/7 continuous sampling and single sample determinations, there was no reason to have a provision to void a sample or to require the use of a sample that exceeded the standard when production was low for determining compliance based on averaging multiple samples. However, under final paragraph (d), the sampling methodology is modified from the proposal and, therefore, coal production levels and representative sampling are as important for CPDM sampling as for CMDPSU sampling. Under final § 70.208, sampling is required on 15 consecutive shifts on a quarterly basis, which is necessary to ensure that the operator collects samples that are representative of normal mining activity. When a sample exceeds the standard while production is less than normal, it should be used to determine the respirable dust concentration of the MMU since operating at a higher production would likely increase miners' respirable dust exposure. For these reasons, final paragraph (d) includes the same criteria that apply to voiding DO samples collected with a CPDM as that required by final § 70.206(d) when sampling with a CMDPSU.

Therefore, final paragraph (d) includes requirements that, with the exception of conforming changes, are the same as proposed § 70.207(d) and existing § 70.207(d) regarding samples that may be voided by MSHA based on production. The rationale for final paragraph (d) is the same as that for final § 70.206(d) and is discussed elsewhere in this preamble under § 70.206(d).

Final paragraph (e) is similar to proposed § 70.208(f) and (g). It requires that when a valid representative sample taken in accordance with this section meets or exceeds the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used, the operator must: (1) Make approved respiratory equipment available; (2) Immediately take corrective action; and (3) Record the corrective actions. The actions required by final paragraph (e) are similar to those in proposed § 70.208(g).

Proposed § 70.208(f)(1)–(5) would have required that when a valid end-of-shift measurement meets or exceeds the applicable ECV or a weekly accumulated exposure exceeds the weekly permissible accumulated exposure, the operator must take the following actions before production begins on the next shift: (1) Make approved respiratory equipment

available; (2) implement corrective actions; (3) submit to the District Manager for approval the corrective actions implemented; (4) review the adequacy of the approved CPDM Performance Plan; and (5) record the corrective actions taken.

Proposed § 70.208(g) would have required that when a valid end-of-shift equivalent concentration exceeds the standard but is less than the applicable ECV in Table 70–2, the operator would have to: (1) Make approved respiratory equipment available to affected miners in accordance with § 72.700; (2) implement corrective actions to ensure compliance with the standard on the next and subsequent production shifts; (3) record the reported excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363; and (4) review the adequacy of the approved CPDM Performance Plan and submit to the District Manager for approval any plan revisions within 7 calendar days following posting of the end-of-shift equivalent concentration on the mine bulletin board.

As noted previously in the discussion on final § 70.206(e), MSHA clarified, in the March 8, 2011, request for comments (76 FR 12648), that the proposal would require that operators record both excessive dust concentrations and corrective actions in the same manner as conditions are recorded under § 75.363 and that ''MSHA would not consider excessive dust concentrations or corrective actions to be hazardous conditions, since the proposed requirement is not a section 75.363 required record'' (76 FR 12650).

Comments on proposed § 70.208(g) were identical or similar to those on proposed § 70.207(i). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(e).

In response to the comments, final paragraph (e) is changed from the proposal. It does not require action if the dust sample exceeds the standard but is less than the ECV in Table 70–1. Rather, it requires an operator to take certain actions when a respirable dust sample meets or exceeds the ECV in Table 70–1. Unlike the proposal, there would be no violation if one operator full-shift sample meets or exceeds the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used. Although the Secretary has determined that a single full-shift measurement of respirable coal mine dust accurately represents atmospheric conditions to which a miner is exposed during each shift, MSHA has concluded that a noncompliance determination based on a single full-shift sample will only be made on MSHA inspector samples. With respect to operator samples, MSHA reevaluated its enforcement strategy under the proposed rule. Under the final rule, MSHA will not issue a citation when one operator sample meets or exceeds the ECV but will require the operator to take corrective action on a single overexposure to lower dust levels. This will protect miners from subsequent overexposures.

In addition, final paragraph (e) results in a change to the existing averaging method so that there is no longer an averaging process where miners are exposed to high levels of respirable coal mine dust and no action is taken to lower dust levels. Under the existing standards, corrective action is required only after the average of five operator samples exceeds the respirable coal mine dust standard and a citation is issued. This permits specific instances of miners' overexposures without requiring any corrective action by the operator to reduce concentrations to meet the standard. For example, currently, five dust samples of miners' exposures are averaged, with some samples indicating that the miner is exposed to unhealthy dust levels above the existing 2.0 mg/m^3 standard. Five samples of: 2.3, 2.5, 2.5, 1.3, and 1.2 mg/m^3 result in an average of 1.96 mg/m^3, which meets the existing 2.0 mg/m^3 standard, but three of the five single samples exceed the existing 2.0 mg/m^3 standard. Under the existing standards, there is no requirement for the operator to take any corrective action, based on those high samples, to lower dust levels and to avoid further overexposures. The final rule requires immediate corrective actions to lower dust concentrations when a single, full-shift operator sample meets or exceeds the ECV for the applicable dust standard. These corrective actions will result in reduced respirable dust concentrations in the mine atmosphere and, therefore, will provide better protection of miners from further high exposures. The Secretary has determined that a single full-shift measurement of respirable coal mine dust accurately represents atmospheric conditions to which a miner is exposed during such shift.

Under final paragraph (e), operators will protect miners from overexposures by making respiratory equipment available and taking and recording corrective actions.

If sampling with a CMDPSU, the actions must be taken upon notification by MSHA that a respirable dust sample taken in accordance with this section meets or exceeds the ECV for the applicable standard. If sampling with a CPDM, the actions must be taken when the sampling measurement shows that a dust sample taken in accordance with this section meets or exceeds the ECV for the applicable standard.

Final paragraph (e)(1), like proposed § 70.208(f)(1) and (g)(1), requires that the operator make approved respiratory equipment available to affected miners in accordance with final § 72.700 of this chapter. Comments on proposed § 70.208(f)(1) and (g)(1) were identical or similar to those on proposed § 70.207(g)(1) and (i)(1). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for final paragraph (e)(1), under § 70.206(e)(1).

Final paragraph (e)(2) is similar to proposed § 70.208(f)(2) and (g)(2). It requires that the operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (e)(2) is consistent with existing § 70.201(d), which requires a mine operator to take corrective action to lower the concentration of respirable dust. The types of corrective actions that could be taken are discussed elsewhere in this preamble under § 70.206(e)(2).

Proposed § 70.208(f)(2) and (g)(2) would have required that corrective action be taken on the next and subsequent production shifts. Final paragraph (e)(2) requires that the corrective action must be taken immediately to protect miners from subsequent overexposures. The rationale for final paragraph (e)(2) is the same as that for final § 70.206(e)(2) and is discussed elsewhere in this preamble under § 70.206(e)(2).

Comments on proposed § 70.208(g)(2) were identical or similar to those on proposed § 70.208(f)(2). One commenter stated that it is not possible to implement corrective actions before production begins on the next shift. Another commenter stated that the proposal would eliminate ''hot-seating'', forcing mine operators to work only 8-hour shifts because the weight of the sample is not known until the production crew arrives on the surface and the data are downloaded.

Immediate corrective actions are necessary to ensure that miners are not subject to subsequent overexposures and to provide improved protection for miners. If sampling with a CMDPSU, the actions must be taken upon notification by MSHA that a respirable dust sample taken in accordance with this section meets or exceeds the ECV for the applicable standard. MSHA has no information that operators will limit shift lengths to 8 hours. Based on MSHA's experience, operators establish

the length of work shifts primarily to accommodate production needs at their mines.

Final paragraph (e)(3) is similar to proposed § 70.208(f)(5)(v) and (g)(3). Final paragraph (e)(3) requires that the mine operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records must be retained at a surface location at the mine for at least 1 year and must be made available for inspection by authorized representatives of the Secretary and the representative of miners. Comments on proposed § 70.208(f)(5)(v) and (g)(3) were identical or similar to those on proposed § 70.207(i)(3). The comments are consolidated and discussed, together with the rationale for final paragraph (e)(3), elsewhere in this preamble under § 70.206(e)(3).

Unlike proposed § 70.208(f)(4) and (g)(4), final paragraph (e) does not require the operator to review and revise a CPDM Performance Plan. As discussed elsewhere in this preamble under § 70.206, the final rule does not include the proposed requirements for a CPDM Performance Plan.

In addition, unlike proposed § 70.208(f)(3), final paragraph (e) does not require the submission of corrective actions to the District Manager for approval. Comments on proposed § 70.208(f)(3) were the same as or similar to those on proposed § 70.207(g)(2). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(h)(4).

For consistency between the sampling requirements of the final rule, final paragraphs (e)(1)–(3) are identical to § 70.206(e)(1)–(3) regarding bimonthly sampling of MMUs, § 70.207(d)(1)–(3) regarding bimonthly sampling of designated areas, § 70.209(c)(1)–(3), regarding quarterly sampling of designated areas, § 71.206(h)(1)–(3) regarding quarterly sampling, and except for conforming changes, § 90.207(c)(1)–(3) regarding quarterly sampling.

Final paragraphs (f)(1) and (2) are redesignated and changed from proposed § 70.208(d) and (e). Paragraph (f) provides that noncompliance with the standard is demonstrated during the sampling period when: (1) Three or more valid representative samples meet or exceed the excessive concentration value (ECV) in Table 70–1 that corresponds to the applicable standard and particular sampling device used; or (2) The average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and particular sampling device used.

In the March 8, 2011, request for comments (76 FR 12649), MSHA stated that the Agency is interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the ECV. MSHA also requested comments on alternative actions, other than those contained in the proposal, for MSHA and the operator to take if operators use a CPDM. MSHA further stated that it is particularly interested in alternatives and how such alternatives would be protective of miners.

Several commenters stated that they supported the use of single, full-shift samples for making noncompliance determinations. Other commenters expressed concern about proposed § 70.208(d), which would have required that no valid end-of-shift equivalent concentration measurement meet or exceed the ECV listed in Table 70–2 that corresponds to the applicable standard.

In response to the comments, the final rule is changed from the proposal. Final paragraph (f), like final §§ 70.206(f), 70.207(e), and 70.209(d), provides that more than one operator sample will be used to determine noncompliance with the standard during the sampling period. Specifically under these final provisions, a violation is established when either two or more valid representative samples (bimonthly MMU and DA sampling, and quarterly DA sampling) or three or more valid representative samples (quarterly MMU sampling) meet or exceed the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used; or when the average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and particular sampling device used.

The final rule is changed from the proposal. Final paragraph (e), like final §§ 70.206(e), 70.207(d), and 70.209(c), provides greater protection for miners. Under the final rule, when a single full-shift operator sample meets or exceeds the ECV that corresponds to the applicable standard and particular sampling device used, the operator is made aware of a potential problem with the dust controls being used. The final rule requires that an operator must make approved respiratory equipment available; immediately take corrective action; and record the corrective actions. Under the final rule, miners will be afforded protection from overexposures during a single shift. In addition, the final rule, will provide miners with the additional protection afforded by MSHA's single sampling under § 72.800.

Some commenters questioned the accuracy of a single sample used to make compliance determinations. Some commenters were also concerned that making compliance determinations on a single sample does not represent a miner's long term exposures. The rationale for § 72.800 and comments concerning the accuracy and validity of using a single full-shift measurement are discussed elsewhere in this preamble under § 72.800.

Some commenters stated that issuing a citation based on a single full-shift sample when the operator is required to submit multiple samples did not allow for shift-to-shift variability.

There is no shift-to-shift variability that needs to be considered if a violation is based on a single full-shift sample. However, because the final rule provides that a violation of the respirable coal mine dust standard is based on more than one operator single sample, MSHA needed to adjust the number of samples on which a compliance determination would be made. The probability of measurement error in at least one shift increases when several multiple shifts are considered, as under the final rule. Measurement error on multiple shift sampling is due to shift-to-shift variability. Shift-to-shift variation could include differences in sampling location, miners' wearing the sampling device differently, or changes in air velocity. Therefore, MSHA needed to modify the citation criteria in order to maintain 95 percent confidence in every noncompliance determination.

Some commenters suggested that the exposure limit for a miner per week should not be permitted to exceed the dose equivalent to that received as if exposed to 10 mg/m^3 for a scheduled forty-hour week and that under no circumstances could the exposure limit for the week be increased to a dose equivalent to above 2.0 mg/m^3 for eight hours if the work week is less than forty hours. These commenters stated that measuring the dose over a week improves exposure accuracy and is therefore an improvement over the single shift sample methodology.

The final rule does not include a weekly exposure limit.

In the final rule, MSHA changed the existing averaging method so that there

is no longer an averaging process where miners can be exposed to high levels of respirable coal mine dust and no action is taken to lower dust levels. The existing averaging method may conceal high exposures that could have an effect on risk. The accuracy and validity of using a single full-shift measurement is discussed elsewhere in this preamble under § 72.800 and a detailed description of the issue involving sampling bias due to averaging is provided in Appendix A of the 2000 single sample proposed rule (65 FR 42108), available at *http://www.msha.gov/REGS/FEDREG/PROPOSED/2000PROP/00-14075.PDF*].

Accordingly, the final rule is changed from the proposal. Final paragraph (f)(1) provides that noncompliance with the standard is demonstrated during the sampling period when three or more valid representative samples meet or exceed the ECV in Table 70–1. Similarly, final §§ 70.206(f)(1), 70.207(e)(1), and 70.209(d)(1), all provide that noncompliance is demonstrated when either two or more valid representative samples meet or exceed the ECV in Table 70–1. Additional information on the modified citation criteria for multiple shift samples is provided in Appendix C of the July 7, 2000 proposed rule. Appendix C is incorporated as part of this final rule, (*http://www.msha.gov/REGS/FEDREG/PROPOSED/2000PROP/00-14075.PDF*). Additional discussion regarding variability and measurement error on single samples, in response to comments, is in the Section-by-Section Analysis related to final § 72.800 of this preamble.

Final Table 70–1 is renumbered from proposed Table 70–2, which included ECVs based on single-shift CPDM measurements. Table 70–1 includes ECVs based on single-shift measurements taken with either a CMDPSU or a CPDM. Final Table 70–2 includes ECVs based on the average of 5 or 15 full-shift measurements taken with a CMDPSU or a CPDM.

One commenter stated that the ECVs in proposed Table 70–1 were too low. Another commenter stated that the sampling and analytical error used in the calculations for the ECVs in proposed Table 70–2 was based on unverified assumptions and would result in unjustified noncompliance determinations.

The NIOSH Criteria Document recommended that MSHA make no upward adjustment in exposure limits to account for measurement uncertainty for single, full-shift samples used to determine noncompliance. The Dust Advisory Committee made the same recommendation but it was not unanimous.

The Secretary must show to a certain level of confidence that there has been an overexposure before issuing a citation. The final rule is consistent with generally accepted industrial hygiene principles for health standards that include an error factor in determining noncompliance to account for measurement uncertainty. The ECVs were calculated to ensure that, if an ECV is met or exceeded, MSHA can determine noncompliance with the applicable dust standard with at least 95 percent confidence.

Each ECV in final Table 70–1 was calculated to ensure that citations would be issued only when a sample measurement from a single shift demonstrates, with at least 95 percent confidence, that the applicable dust standard has been exceeded. In Table 70–1, the ECV that corresponds to the applicable standard differs depending on the sampling device used. Final Table 70–1 revises two values in proposed Table 70–2 due to rounding inconsistencies; the final ECV is changed from proposed 1.59 mg/m^3 to 1.58 mg/m^3 when the applicable standard is 1.4 mg/m^3, and from proposed 0.80 mg/m^3 to 0.79 mg/m^3 when the applicable standard is 0.7 mg/m^3.

Final Table 70–2 includes ECVs corresponding to the average concentration of either 5 or 15 samples that will provide the Secretary with a 95 percent confidence level that the applicable respirable dust standard has been exceeded. A more detailed discussion on the derivation of the ECVs in both Tables 70–1 and 70–2 is included in Appendix A of the preamble.

Many commenters supported proposed § 70.208(e) that would have required that no weekly accumulated exposure exceed the weekly permissible accumulated exposure. Other commenters stated that this provision would create problems when attempting to calculate the weekly permissible accumulated exposure on a 40-hour week based on samples collected on shifts greater than 8 hours. Commenters also stated that this provision would not benefit miners and was unachievable on a day-to-day basis.

Final paragraph (f)(2) is similar to proposed § 70.208(e). Proposed § 70.208(e) would have provided for a compliance determination based on whether a weekly accumulated exposure (WAE) exceeded the weekly permissible accumulated exposure (WPAE). The WPAE was defined as the maximum amount of accumulated exposure to respirable coal mine dust, expressed in mg-hr per cubic meter of air (mg-hr/m^3), permitted for an occupation during a 40-hr work week (Sunday through Saturday). The WAE was defined as the total exposure to respirable coal mine dust, expressed in milligram-hour (mg-hr) per cubic meter of air (mg-hr/m^3), accumulated by an occupation during a work week (Sunday thru Saturday). Determining the WPAE and the WAE would have required a complex calculation that commenters found to be difficult to understand and apply. Final paragraph (f) provides a simpler method than the proposal for determining compliance.

In the March 8, 2011, request for comments (76 FR 12649), MSHA stated that a commenter at a public hearing requested clarification on whether there would be more than one violation of the respirable dust standard if a single, full-shift sample exceeded the ECV during the same week that the weekly permissible accumulated exposure (WPAE) limit was exceeded. MSHA further stated that under the proposed rule, it would be a violation for each occurrence that the ECV or WPAE is exceeded. MSHA requested comments and alternatives to the proposed rule.

A few commenters stated that it was unfair that a mine operator could be cited for violating the single sample provision under proposed § 70.208(d) and the WAE provision under proposed § 70.208(e). As stated earlier, the final rule does not include the proposed WAE provision. Under final paragraphs (f)(1) and (2), noncompliance is based on 3 or more operator's samples or the average of the samples for a particular DO or ODO.

For consistency between the sampling requirements of the final rule, final paragraphs (f)(1) and (2) are the same as final §§ 70.206(f)(1) and (2), 70.207(e)(1) and (2), 70.209(d)(1) and (2), and, except for conforming changes, 71.206(i)(1) and (2), and 90.207(d)(1) and (2).

Final paragraphs (g)(1) and (2) are new. They are similar to proposed § 70.207(f) and they are included in final § 70.208 because proposed 24/7 sampling of DOs in each MMU is not included in the final rule. Final paragraph (g)(1) requires that unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard involving a DO in an MMU, paragraph (a)(1) will not apply to the DO in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section. Final paragraph (g)(2) requires that unless otherwise directed by the District Manager, upon issuance of a citation for

a violation of the standard involving a type of ODO in an MMU, paragraph (a)(2) will not apply to that ODO type in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

Final paragraphs (g)(1) and (2) include an exception to allow the District Manager flexibility to address extenuating circumstances that would affect sampling. An example of extenuating circumstances would occur when an uncorrected violation would require abatement sampling that continues into the next sampling period.

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraphs (g)(1) and (2) are the same as final §§ 70.206(g), 70.207(f), 70.209(e), 71.206(j), and 90.207(e).

Final paragraph (h) is similar to proposed § 70.208(f) and (g)(3). It requires that upon issuance of a citation for violation of the standard, the operator must take the following actions sequentially: (1) Make approved respiratory equipment available; (2) immediately take corrective action; (3) record the corrective actions; and (4) conduct additional sampling. The actions required by paragraph (h) are similar to those proposed in § 70.208(f)(1)–(5) and (g)(3) discussed under final paragraph (e). Paragraph (h) includes the term ''sequentially'' to ensure that corrective actions are taken in the order they are listed.

Final paragraph (h)(1), like proposed § 70.208(f)(1), requires that the mine operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Comments on proposed § 70.208(f)(1) are identical or similar to those on proposed § 70.207(g)(1) and (i)(1). The comments are consolidated and discussed, together with the rationale for paragraph (h)(1), elsewhere in this preamble under final § 70.206(e)(1).

Final paragraph (h)(2) is substantially similar to proposed § 70.208(f)(2). It requires that, if a citation is issued, the mine operator must immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (h)(2) is consistent with existing § 70.201(d), which requires a mine operator to take corrective action to lower the concentration of respirable dust. The types of corrective actions that could be taken are discussed elsewhere in this preamble under § 70.206(e)(2).

Proposed § 70.208(f)(2) would have required that corrective action be taken on the next and subsequent production shifts. Final paragraph (h)(2) clarifies that the corrective action must be taken immediately to protect miners from overexposures. Comments on proposed § 70.208(f)(2) were the same as or similar to comments on proposed § 70.208(g)(2). The comments are consolidated and discussed under final paragraph (e)(2). In addition, the rationale for final paragraph (h)(2) is the same as that for final § 70.206(e)(2) and (h)(2) and is discussed elsewhere in this preamble under § 70.206(e)(2) and (h)(2).

Paragraph (h)(3) is similar to proposed § 70.208(f)(5)(v) and (g)(3). It requires that the operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. Comments on proposed § 70.208(f)(5)(v) are similar to those on proposed § 70.208(g)(3). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for final paragraph (h)(3), under § 70.206(e)(3).

Final paragraph (h)(4) is similar to proposed § 70.207(g)(3). It requires that the mine operator, within 8 calendar days after the date the citation is issued, begin sampling the environment of the affected occupation in the MMU on consecutive normal production shifts until five valid representative samples are taken. Under the proposed rule, there was no reason to propose additional sampling to demonstrate that subsequent respirable dust concentrations were in compliance with the standard; the 24/7 continuous sampling results would have shown whether the corrective actions were effective and compliance was achieved. However, since the final rule does not include the proposed 24/7 sampling requirement, it is necessary to resample to confirm compliance. The five additional representative samples required under this section are less burdensome for operators than the proposed sampling that would have been required every production shift, every day. MSHA believes that the sampling requirements in the final rule are sufficient to demonstrate compliance and protect miners from overexposure. Final paragraph (h)(4) is consistent with existing § 70.201(d), which requires the operator to sample each production shift, after a citation is issued, until five valid respirable dust samples are taken. In addition, paragraph (h)(4) requires that the sampling must begin within 8 calendar days after the date the citation is issued. The rationale for final paragraph (h)(4) is the same as that for final § 70.206(h)(4) and is discussed elsewhere in this preamble under § 70.206(h)(4).

Unlike proposed § 70.208(f)(3), final paragraph (h) does not require the submission of corrective actions to the District Manager for approval. Comments on proposed § 70.208(f)(3) were the same as or similar to those on proposed § 70.207(g)(2). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(h)(4).

Unlike proposed § 70.208(f)(4), final paragraph (h) does not require the operator to review and revise a CPDM Performance Plan. Several commenters stated that the CPDM Performance Plan would not be necessary when sampling with the CPDM and additional plan requirements were too burdensome on mine operators. As discussed elsewhere in this preamble under § 70.206, the final rule does not include the proposed requirements for a CPDM Performance Plan.

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (h) is the same as final § 70.206(h) regarding bimonthly sampling of MMUs, § 70.207(g) regarding bimonthly sampling of designated areas, § 70.209(f) regarding quarterly sampling of designated areas, § 71.206(k) regarding quarterly sampling, and § 90.207(f) regarding quarterly sampling.

Final paragraph (i) is similar to proposed §§ 70.207(h) and 70.208(f)(3). It provides that a citation for a violation of the standard will be terminated when: (1) Each of the five valid representative samples is at or below the standard; and (2) the operator has submitted to the District Manager revised dust control parameters as a part of the mine ventilation plan for the MMU in the citation and these changes have been approved by the District Manager. It further requires that the revised parameters must reflect the control measures used by the operator to abate the violation.

Under proposed § 70.208(f)(3), a mine operator would have had to submit corrective actions to the District Manager for approval in the ventilation

plan, whenever a violation occurred. Unlike proposed § 70.208(f)(3), final paragraph (i)(2) requires only the submission of revised dust control parameters. Paragraph (i) is consistent with MSHA's existing practice of including, in the body of a citation, a requirement to submit revised dust control parameters as a condition for terminating a citation.

Comments on proposed § 70.207(h) and the rationale for paragraphs (i)(1) and (2) are discussed elsewhere in this preamble under § 70.206(i).

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraphs (i)(1) and (2) are the same as final §§ 70.206(i)(1) and (2), 70.207(h)(1) and (2), and, 70.209(g)(1) and (2).

Proposed § 70.208(h) is not included in the final rule. Proposed paragraph (h) would have provided that, during the 24 months following the effective date of the final rule, if an operator is unable to maintain compliance with the standard for an MMU and has determined that all feasible engineering or environmental controls are being used, the operator may use supplementary controls, including worker rotation, to reduce exposure. These controls had to be used in conjunction with CPDMS for a period of up to 6 months.

In the March 8, 2011, request for comments (76 FR 12650), MSHA stated that the proposed sampling provisions address interim use of supplementary controls when all feasible engineering or environmental controls have been used but the mine operator is unable to maintain compliance with the dust standard. MSHA further stated that with MSHA approval, operators could use supplementary controls, such as rotation of miners, or alteration of mining or of production schedules in conjunction with CPDMs to monitor miners' exposures. MSHA solicited comments on this proposed approach and any suggested alternatives, as well as the types of supplementary controls that would be appropriate to use on a short-term basis.

Many commenters stated that worker rotation was not the answer to controlling respirable dust. They also stated that MSHA, not the operator, should make the determination if all feasible engineering or environmental controls have been exhausted. Other commenters stated that miners should be able to rotate out of a DO and take the sampling device with them, which would minimize respirable dust exposure to individual miners. Some commenters were concerned whether proposed paragraph (h) included the use of respirators such as powered air-purifying respirators (PAPRS), or other suitable protective NIOSH-approved respirators. In addition, these commenters stated that MSHA should allow operators to use a ''hierarchy of controls'' to limit miners' exposure to coal mine dust. This hierarchy of controls consists of first using feasible engineering controls, then administrative controls, and finally respirators including PAPRs.

As specified in Sections 201(b) and 202 of the Mine Act, operators must continuously maintain the average concentration of respirable dust in the mine atmosphere. The Mine Act provides further that respirators must not be substituted for environmental controls.

Engineering controls, also known as environmental controls, are the most protective means of controlling dust generation at the source. MSHA requires engineering or environmental controls as the primary means of controlling respirable dust in the mine environment. This requirement is consistent with the Mine Act and generally accepted industrial hygiene principles. Engineering controls reduce dust generation at the source, or suppress, dilute, divert, or capture the generated dust. Unlike administrative controls and respiratory protection, well-designed engineering controls or environmental controls provide consistent and reliable protection to all workers because the controls are less dependent on individual human performance, supervision, or intervention to function as intended. This is an industrial hygiene principle that is widely supported in publicly available literature.[59] Comments on using a ''hierarchy of controls'' and the use of respirators including PAPRs, are further discussed in the preamble under final § 72.700.

MSHA has determined that proposed paragraph (h) is not necessary and it is not included in the final rule. The proposal would have allowed limited short-term use of measures to supplement engineering or environmental controls to accommodate operators who may have had difficulty meeting the standards by the compliance dates that would have been established by the final rule. However, the final rule includes changes from the proposal on the respirable dust standard in § 70.100, the implementation period for the final standard, and the sampling program. These changes will allow mine operators sufficient time to achieve compliance with the new standard using engineering or environmental controls without the need to use supplementary controls.

12. Section 70.209 Quarterly Sampling; Designated Areas

Final § 70.209, like the proposal, addresses quarterly sampling of designated areas 18 months after the effective date of the final rule.

Under final § 70.201(b), until January 31, 2016, all DAs will be sampled under final § 70.207 regarding bimonthly sampling of designated areas. On February 1, 2016: DAs associated with an MMU will be redesignated as ODOs and will be subject to final § 70.209 regarding quarterly sampling of MMUs; and DAs identified by the operator under § 75.371(t) (e.g., in outby areas) will be subject to the quarterly sampling requirements under this final § 70.209. In addition, final § 70.201(b) addresses the sampling devices required for quarterly sampling of DAs under this final § 70.209.

Final paragraph (a) makes clarifying non-substantive changes to proposed § 70.209(a). It requires that the operator must sample quarterly each DA on consecutive production shifts until five valid representative samples are taken. The quarterly periods are: (1) January 1–March 31; (2) April 1–June 30; (3) July 1–September 30; and (4) October 1–December 31.

On March 8, 2011, MSHA issued in the **Federal Register** a request for comments (76 FR 12648). MSHA requested comments on all aspects of the proposed rule including the areas that operators should sample, the sampling frequency, and which areas could be sampled using CMDPSUs or CPDMs.

One commenter stated that DA sampling should be discontinued because it provides little indication of the miner's exposure.

Sampling DAs, such as belt transfer points, is necessary to evaluate the dust generating sources that are not on an MMU and provides protection from excessive respirable coal mine dust levels to miners that work in outby areas of the mine. The final rule requires mine operators to sample DAs. This provision is consistent with existing § 70.208 regarding sampling of DAs.

[59] For example, see: Alli, B.O., Fundamental Principles of Occupational Health and Safety, the International Labour Organization (2008), page 105, *http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_093550.pdf;* Engineering Controls—NIOSH Workplace Safety and Health Topic, *http://www.cdc.gov/niosh/topics/engcontrols;* Good Practice Guidance on Occupational Health Risk Assessment, the International Council on Mining & Metals, *http://www.icmm.com/search-results?sortField=sort_rank&query=Good+practice+guidance+on+occupational+health+risk+assessment.*

Some commenters stated that they should continue to use the gravimetric sampling devices for DA sampling and not be required to use the CPDM. Final § 70.209(a), like proposed § 70.209, allows the operator to sample DA locations with either a CMDPSU or a CPDM.

One commenter suggested that additional DA sampling be included in the final rule for major projects such as raise bore drilling of mine shafts. MSHA has and will continue to evaluate situations that may require additional DAs to be established for sampling.

Final paragraph (b) is similar to proposed § 70.209(b) and clarifies the time frame for implementation when there is a change in the applicable standard. It requires that when the respirable dust standard is changed in accordance with § 70.101 (Respirable dust standard when quartz is present), the new standard will become effective 7 calendar days after the date of the notification of the change by MSHA. Under proposed § 70.209(b), a new standard would have gone into effect on the first production shift following the operator's receipt of notification after the respirable dust standard is changed in accordance with § 70.101. The rationale for final paragraph (b) is discussed elsewhere in this preamble under § 70.208(c). MSHA received no comments on the proposal.

Final paragraph (b) does not include the requirements in proposed 70.209(b)(1) and (b)(2). Proposed § 70.209(b)(1) would have required that if all samples from the most recent quarterly sampling period do not exceed the new standard, respirable dust sampling of the DA would begin the first production shift during the next quarterly period following receipt of the change from MSHA. Proposed § 70.209(b)(2) would have required that if any sample from the most recent quarterly sampling period exceeded the new standard (reduced due to the presence of quartz), the operator would have had to make necessary adjustments to the dust control parameters in the mine ventilation plan within three days and then collect samples from the affected DA on consecutive shifts until five valid representative samples are collected. It further provided that the samples collected would be treated as normal quarterly samples. MSHA received one comment on the proposal, which was similar to comments received on proposed § 70.207(c)(1) and (2). The comments are consolidated and discussed, together with MSHA's rationale, elsewhere in this preamble under § 70.206(c)(1) and (2).

For consistency between the sampling requirements of the final rule, final paragraph (b) is the same as final § 70.206(c) regarding bimonthly sampling of MMUs, § 70.207(b) regarding bimonthly sampling of designated areas, and § 70.208(c) regarding quarterly sampling of MMUs.

Final paragraph (c) is similar to proposed § 70.209(e) and (g). It requires that when a respirable dust sample taken in accordance with this section meets or exceeds the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used, the operator must: (1) Make approved respiratory equipment available; (2) Immediately take corrective action; and (3) Record the corrective actions. The actions required by paragraph (c) are similar to those in proposed § 70.209(e) and (g).

Proposed § 70.209(e) would have required that, during the time for abatement to be fixed in a citation, the operator: (1) Make approved respiratory equipment available to affected miners in accordance with § 72.700; (2) submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to at or below the standard; and (3) upon approval by the District Manager, implement the proposed corrective actions and then sample the affected DA on each production shift until five valid representative samples are taken.

Proposed § 70.209(g) would have required that when using a CPDM and a valid end-of-shift equivalent concentration exceeded the standard but is less than the applicable ECV in Table 70–2, the operator would have had to: (1) Make approved respiratory equipment available to affected miners in accordance with § 72.700; (2) implement corrective actions to ensure compliance with the standard on the next and subsequent production shifts; (3) record the reported excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363; and (4) review the adequacy of the approved CPDM Performance Plan and submit to the District Manager for approval any plan revisions within 7 calendar days following posting of the end-of-shift equivalent concentration on the mine bulletin board.

As noted previously in the discussion on final § 70.206(e), MSHA clarified, in the March 8, 2011 request for comments (76 FR 12648), that the proposal would require that operators record both excessive dust concentrations and corrective actions in the same manner as conditions are recorded under § 75.363 and that ''MSHA would not consider excessive dust concentrations or corrective actions to be hazardous conditions, since the proposed requirement is not a section 75.363 required record'' (76 FR 12650).

Comments on proposed § 70.209(g) were identical or similar to those on proposed § 70.207(i). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(e). In response to the comments, final paragraph (c) is changed from the proposal. It does not require action if the dust sample exceeds the standard but is less than the ECV in Table 70–1. Rather, it requires an operator to take certain actions when a valid representative sample meets or exceeds the ECV in Table 70–1. If sampling with a CMDPSU, actions must be taken upon notification by MSHA that a respirable dust sample taken in accordance with this section meets or exceeds the ECV for the applicable standard. If sampling with a CPDM, the actions must be taken when the sampling measurement shows that a dust sample taken in accordance with this section meets or exceeds the ECV for the applicable standard. The rationale for final paragraph (c) is the same as that for §§ 70.206(e), 70.207(d), and 70.208(e), and is discussed elsewhere in this preamble under § 70.208(e).

Final paragraph (c)(1), like proposed § 70.209(e)(1) and (g)(1), requires that the operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Comments on proposed § 70.209(e)(1) and (g)(1) were identical or similar to those on proposed §§ 70.207(g)(1) and (i)(1) and 70.208(f)(1) and (g)(1). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for paragraph (c)(1), under § 70.206(e)(1).

Final paragraph (c)(2), is similar to proposed § 70.209(e)(3) and (g)(2). It requires that the operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (c)(2) clarifies that corrective action needs to be taken immediately to protect miners from overexposures. Comments on proposed § 70.209(e)(3) and (g)(2) were identical or similar to those on proposed 70.208(f)(2). The comments are consolidated and discussed elsewhere in this preamble under § 70.208(e)(2). The rationale for final paragraph (c)(2) is the same as that for § 70.206(e)(2) and is discussed under that section.

Final paragraph (c)(3) is similar to proposed § 70.209(g)(3)(v). It requires that the mine operator make a record of

the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. Comments on proposed § 70.209(g)(3) were identical or similar to those on proposed §§ 70.207(i)(3) and 70.208(g)(3). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for paragraph (c)(3), under § 70.206(e)(3).

Unlike proposed § 70.209(e)(2), final paragraph (c) does not require the operator to submit corrective actions to the District Manager for approval. Comments on proposed § 70.209(e)(2) were the same as or similar to those on proposed § 70.207(g)(2). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(h)(4).

In addition, unlike proposed § 70.209(g)(4), final paragraph (c) does not require operators to review and revise a CPDM Performance Plan. As discussed elsewhere in this preamble under § 70.206, the final rule does not include the proposed requirements for a CPDM Performance Plan. Comments on proposed § 70.209(g)(4) are similar to those on proposed § 70.208(f)(4). The comments are consolidated and discussed elsewhere in this preamble under § 70.208(h).

For consistency between the sampling requirements of the final rule, final paragraphs (c)(1)–(3) are identical to final § 70.206(e)(1)–(3) regarding bimonthly sampling of MMUs, § 70.207(d)(1)–(3) regarding bimonthly sampling of designated areas, § 70.208(e)(1)–(3) regarding quarterly sampling of MMUs, § 71.206(h)(1)–(3) regarding quarterly sampling, and except for conforming changes, § 90.207(c)(1)–(3) regarding quarterly sampling.

Final paragraph (d) is redesignated and changed from proposed § 70.209(c). Paragraph (d)(1) is similar to proposed § 70.209(c) regarding sampling of DAs, and paragraph (d)(2) is similar to proposed § 70.208(e) regarding sampling of MMUs. Paragraph (d) states that noncompliance with the standard is demonstrated during the sampling period when: (1) Two or more valid representative samples meet or exceed the excessive concentration value (ECV) in Table 70–1 that corresponds to the applicable standard and particular sampling device used; or (2) The average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and particular sampling device used.

In the March 8, 2011, request for comments (76 FR 12649), MSHA stated that the Agency is interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the ECV.

Proposed § 70.209(c) would have required that, if using a CMDPSU, no valid single-shift sample equivalent concentration meet or exceed the ECV that corresponds to the applicable standard in proposed Table 70–1; or if using a CPDM, no valid end-of-shift equivalent concentration meet or exceed the applicable ECV in proposed Table 70–2. Many commenters expressed concern that compliance determinations would be made on the basis of a single-shift measurement.

In response to comments, final paragraph (d) provides two different methods by which compliance determinations can be made. The rationale for paragraphs (d)(1) and (2) is the same as that for §§ 70.206(f)(1) and (2), 70.207(e)(1) and (2), and 70.208(f)(1) and (2), and is discussed elsewhere in this preamble under § 70.208(f)(1) and (2).

For consistency between the sampling requirements of the final rule, final paragraphs (d)(1) and (2) are the same as final §§ 70.206(f)(1) and (2), 70.207(e)(1) and (2), 70.208(f)(1) and (2), and except for conforming changes, § 71.206(i)(1) and (2), and 90.207(d)(1) and (2).

Comments on the ECVs in proposed Table 70–1 are discussed elsewhere in this preamble under § 70.208(f). In addition, a detailed discussion on the derivation of the ECVs in both final Tables 70–1 and 70–2 is included in Appendix A of the preamble. Comments that questioned the accuracy of a single sample in making a compliance determination are addressed elsewhere in this preamble under § 72.800.

Final paragraph (e) is redesignated from proposed § 70.209(d) and makes clarifying and conforming changes. It requires that upon issuance of a citation for a violation of the standard, paragraph (a) of this section will not apply to that DA until the violation is abated and the citation is terminated in accordance with paragraphs (f) and (g) of this section. Paragraph (e) clarifies that a violation must be abated and the citation must be terminated before resuming quarterly sampling. Paragraphs (f) and (g) are discussed below.

Final paragraph (e) includes an exception to allow the District Manager flexibility to address extenuating circumstances that would affect sampling. An example of extenuating circumstances could occur when an uncorrected violation would require abatement sampling that continues into the next sampling period.

Final paragraph (e) is similar to existing § 70.208(d). MSHA did not receive comments on the proposal.

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (e) is the same as final §§ 70.206(g), 70.207(f), 70.208(g), 71.206(j), and 90.207(e).

Final paragraph (f) is similar to proposed § 70.209(e) and (g). It requires that upon issuance of a citation for violation of the standard, the operator must take the following actions sequentially: (1) Make approved respiratory equipment available; (2) immediately take corrective action; (3) record the corrective actions; and (4) conduct additional sampling. The actions required by paragraph (f) are similar to those in proposed § 70.209(e)(1)–(3) discussed in final paragraph (c). In addition, paragraph (f) includes the term ''sequentially'' to ensure that corrective actions are taken in the order they are listed.

Final paragraph (f)(1), like proposed § 70.209(e)(1) and (g)(1), requires that the mine operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Paragraph (f)(1) is consistent with existing § 70.300, which requires the operator to make respiratory equipment available to all persons exposed to excessive concentrations of respirable dust. Comments on proposed § 70.209(e)(1) and (g)(1) are identical or similar to those on proposed §§ 70.207(g)(1) and (i)(1) and 70.208(f)(1) and (g)(1). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for paragraph (f)(1), under § 70.206(e)(1).

Final paragraph (f)(2) is similar to proposed § 70.209(e)(3). It requires that the operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (f)(2) is similar to proposed § 70.209(e)(3) which would have required a mine operator to implement the proposed corrective actions. It is consistent with existing

§ 70.201(d), which requires a mine operator to take corrective action to lower the concentration of respirable dust. Paragraph (f)(2) clarifies that the corrective action must be taken immediately to protect miners from overexposures. The types of corrective actions that could be taken are discussed elsewhere in this preamble under § 70.206(e)(2). Comments on proposed § 70.209(e)(2) are the same as or similar to those on proposed § 70.208(f)(2) and are discussed elsewhere in this preamble under § 70.208(h)(2). The rationale for final paragraph (f)(2) is discussed elsewhere in this preamble under § 70.206(e)(2) and (h)(2).

Final paragraph (f)(3) is similar to proposed § 70.209(g)(3)(v). It requires that the operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. Comments on proposed § 70.209(g)(3)(v) are similar to those on proposed §§ 70.208(g)(3) and 70.207(i)(3). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for final paragraph (f)(3), under § 70.206(e)(3).

Final paragraph (f)(4) is similar to proposed § 70.209(e)(3). It requires the mine operator, within 8 calendar days after the date the citation is issued, to begin sampling the environment of the affected DA on consecutive normal production shifts until five valid representative samples are taken. Paragraph (f)(4) is consistent with existing § 70.201(d), which requires a mine operator to sample each production shift until five valid respirable dust samples are taken. In addition, it requires that the sampling must begin within 8 calendar days after the date the citation is issued. The rationale for final paragraph (f)(4) is the same as that for final § 70.206(h)(4) and is discussed elsewhere in this preamble under § 70.206(h)(4).

Unlike proposed § 70.209(e)(2), final paragraph (f) does not require operators to submit corrective actions to the District Manager for approval. Comments on proposed § 70.209(e)(2) were the same as or similar to those on proposed § 70.207(g)(2). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(h)(4).

For consistency between the sampling requirements of the final rule, except for conforming changes, paragraph (f) is the same as § 70.206(h) regarding bimonthly sampling of MMUs, § 70.207(g) regarding bimonthly sampling of designated areas, § 70.208(h) regarding quarterly sampling of MMUs, § 71.206(k) regarding quarterly sampling, and § 90.207(f) regarding quarterly sampling.

Final paragraph (g) is similar to proposed § 70.209(f) and contains nonsubstantive and organizational changes from the proposal. It provides that a citation for a violation of the standard will be terminated when: (1) Each of the five valid representative samples is at or below the standard; and (2) the operator has submitted to the District Manager revised dust control parameters as a part of the mine ventilation plan for the DA in the citation and the changes have been approved by the District Manager. It further requires that the revised parameters must reflect the control measures used by the operator to abate the violation. Comments on proposed § 70.209(f) are the same or similar to those on proposed § 70.207(h). The comments and the rationale for final paragraphs (g)(1) and (2) are discussed elsewhere in this preamble under § 70.206(i).

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraphs (g)(1) and (2) are the same as final §§ 70.206(i)(1) and (2), 70.207(h)(1) and (2), and 70.208(i)(1) and (2).

Proposed § 70.209(h) would have provided that MSHA approval of the operator's ventilation system and methane and dust control plan may be revoked based on samples taken by MSHA or in accordance with this part 70. Proposed § 70.209(h) is moved to final § 70.201(k) because it applies to all underground sampling entities and not just DAs. Comments on proposed § 70.209(h) are discussed under final § 70.201(k) of this preamble.

13. Section 70.210 Respirable Dust Samples; Transmission by Operator

Final § 70.210(a) is substantially similar to the proposal. It requires the operator, if using a CMDPSU, to transmit within 24 hours after the end of the sampling shift all samples collected, including control filters, in containers provided by the manufacturer of the filter cassette to MSHA's Pittsburgh Respirable Dust Processing Laboratory, or to any other address designated by the District Manager. Final paragraph (a) clarifies that operators must include the control filters with the dust sample transmissions to the Respirable Dust Processing Laboratory. As explained in the preamble to the proposed rule, MSHA uses control filters to improve measurement accuracy by eliminating the effect of differences in pre- and post-exposure laboratory conditions, or changes introduced during storage and handling of the filter cassettes. Including control filters with the dust samples ensures that the appropriate control filter is associated with the appropriate sample filter.

One commenter opposed the proposed 24-hour transmission time frame. The commenter stated that the post office might not be open if the end of the sampling shift is on a Saturday or the day before a federal holiday.

The 24-hour transmission time frame is not a new requirement. It has been required under existing § 70.209(a) since 1980. MSHA considers samples to be ''transmitted'' as long as they have been deposited into a secure mail receptacle provided by the U.S. Postal Service or other mail provider, such as FedEx. MSHA received no comments indicating that operators have encountered problems with the 24-hour transmission time frame.

Final § 70.210(b), like the proposal, is the same as existing § 70.209(b).

Final § 70.210(c), is substantially similar to the proposal. It requires that a person certified in sampling must properly complete the dust data card that is provided by the manufacturer for each filter cassette. It further requires that the dust data card must have an identification number identical to that on the filter cassette used to take the sample and be submitted to MSHA with the sample. It also requires that each dust data card must be signed by the certified person who actually performed the examinations during the sampling shift and must include that person's MSHA Individual Identification Number (MIIN).

As an example, the certified person who performs the required examinations during the sampling shift is the individual responsible for signing the dust data card and verifying the proper flowrate, or noting on the back of the card that the proper flowrate was not maintained. Since the certified person who conducted the examination is most knowledgeable of the conditions surrounding the examination, final paragraph (c) requires that certified

person sign the dust data card. In addition, the MIIN number requirement is consistent with MSHA's existing policy. Since July 1, 2008, MSHA has required that the certified person section of the dust data card include the MIIN, a unique identifier for the certified person, instead of the person's social security number. To ensure privacy and to comport with Federal requirements related to safeguarding personally identifiable information, MSHA has eliminated requirements to provide a social security number.

Finally, paragraph (c) provides that respirable dust samples with data cards not properly completed may be voided by MSHA. This is a change from the proposal. The proposal would have required that, regardless of how small the error, an improperly completed dust data card must be voided by MSHA. Final paragraph (c) allows MSHA flexibility in voiding an improperly completed dust data card. MSHA received no comments on this proposed provision.

Final § 70.210(d) and (e) are the same as the proposal, and are the same as existing § 70.209(d) and (e).

Final § 70.210(f) is changed from the proposal. It requires that, if using a CPDM, the person certified in sampling must validate, certify, and transmit electronically to MSHA within 24 hours after the end of the sampling shift all sample data file information collected and stored in the CPDM, including the sampling status conditions encountered when sampling; and, not tamper with the CPDM or its components in any way before, during, or after it is used to fulfill the requirements of 30 CFR part 70, or alter any sample data files. It further requires that all CPDM data files transmitted electronically to MSHA must be maintained by the operator for a minimum of 12 months.

Final paragraph (f) includes the term ''person certified in sampling'' rather than ''designated mine official.'' This change makes paragraph (f) consistent with final paragraph (c). Final paragraph (f) also includes a clarification that CPDM data files are ''electronically'' transmitted to MSHA, unlike the physical transmission of samples collected with the CMDPSU.

MSHA received a number of comments on the data file transmission time frame included in proposed paragraph (f), which would have required the designated mine official to validate, certify and electronically transmit to MSHA, within 12 hours after the end of the last sampling shift of the work week, all daily sample and error data file information collected during the previous calendar week (Sunday through Saturday) and stored in the CPDM. Some commenters stated that validating, certifying, and transmitting sampling data electronically to MSHA, if using a CPDM, within 12 hours after the end of the last shift of the work week was too short a time frame. Another commenter was concerned that the 12-hour time limit after the end of the last shift sampled would impose unnecessary additional work hours on persons responsible for dust sampling activities since weekend work would be required almost every week. This commenter also stated that the 12-hour time frame was inconsistent with the 24-hour time frame allowed for the transmission of samples taken with a CMDPSU and noted that sampling data would still be timely and relevant if it were transmitted within 70 hours of collection.

MSHA evaluated the comments and concludes that a more appropriate transmission time frame would be within 24 hours after the end of each sampling shift. This 24-hour time frame is consistent with the existing sample data transmission requirement in existing § 70.209(a). It is also consistent with the requirement in final § 70.210(a) that operators transmit CMDPSU sampling data within 24-hours of the end of the sampling shift. Regardless of whether dust samples are collected with a CMDPSU or a CPDM, the person certified in sampling must complete the tasks associated with readying the collected samples for transmission to MSHA within the 24-hour time frame after completion of sampling. Transmitting the CPDM data in this time frame allows MSHA to assess compliance with the standard in a timely manner. Additionally, the commenter's suggestion for a 70-hour transmission time frame would be too long because it could hinder timely corrective actions.

As a clarification to the proposal, final paragraph (f) does not require error data file information to be transmitted to MSHA. Rather, final paragraph (f) requires ''the sampling status conditions encountered when sampling'' to be transmitted to MSHA. This terminology clarifies that changes in conditions that may occur during the sampling shift (e.g., flowrate, temperature, humidity, tilt indicator, etc.) that are different from the CPDM's set parameters and that may affect sampling results must be recorded and transmitted to MSHA.

The requirement in final paragraph (f) that the certified person not tamper with the CPDM or alter any CPDM data files is new. It is consistent with the requirements for CMDPSUs, under existing § 70.209(b) and final § 70.210(b), which provide that an operator not open or tamper with the seal of any filter cassette, or alter the weight of any filter cassette before or after it is used to fulfill the requirements of 30 CFR part 70. It is also consistent with the requirement in 30 CFR 74.7(m) that a CPDM be designed to be tamper-resistant or equipped with an indicator that shows whether the measuring or reporting functions of the device have been tampered with or altered. This provision protects miners' health and ensures the integrity of MSHA's dust sampling program. Therefore, a similar requirement is included for samples taken with a CPDM.

14. Section 70.211 Respirable Dust Samples; Report to Operator; Posting

Final § 70.211(a) is substantially similar to the proposal. It states that MSHA must provide the operator, as soon as practicable, a report with the data specified in paragraphs (a)(1)–(a)(6) on respirable dust samples submitted or whose results were transmitted electronically, if using a CPDM. Final paragraph (a) includes the term as soon as practicable to clarify that, although MSHA intends to provide an operator a timely report, there may be instances when unexpected delays occur. Final paragraph (a) also includes language to clarify that an MSHA report will be provided to an operator whose sampling results were transmitted electronically to the Agency, if using a CPDM. The proposal stated that MSHA would provide the operator with a report on respirable dust samples submitted in accordance with this part. Final paragraph (a) clarifies that samples submitted in accordance with this part not only include samples collected by the CMDPSU, but also include sampling results collected by the CPDM and transmitted electronically to MSHA. MSHA received no comments on the proposed provision.

Final paragraphs (a)(1), (2), (5) and (6) are the same as the proposal: (a)(1) The mine identification number; (a)(2) the locations within the mine from which the samples were taken; (a)(5) the occupation code, where applicable; and (a)(6) the reason for voiding any sample.

Final paragraphs (a)(3) and (4) include a clarifying change from the proposal: (a)(3) The concentration of respirable dust expressed as an equivalent concentration for each valid sample; and (a)(4) the average equivalent concentration of respirable dust for all valid samples. Paragraphs (a)(3) and (a)(4) clarify the proposal by not using the term in milligrams per cubic meter of air (mg/m^3). This clarification conforms to the definition of *equivalent*

concentration, which is discussed elsewhere in the preamble under final § 70.2. MSHA received no comments on proposed paragraphs (a)(1)–(a)(6).

Final § 70.211(b), like the proposal, requires the operator, upon receipt of the MSHA report, to post the data contained in the report on the mine bulletin board for at least 31 days. Final paragraph (b) is the same as existing § 70.210(b). Under the existing requirement, operators have historically posted the entire MSHA report. MSHA anticipates that operators will continue this practice.

One commenter indicated that the 31-day posting requirement allows interested parties sufficient opportunity to review the data. The commenter suggested that data on the DOs that are sampled, as well as the associated sampling results, should also be required to be posted. The commenter stated that such information would reveal which DOs are exposed to the most dust, and the mine's compliance record, and allow interested parties to use the information for such purposes as bidding on jobs.

Final paragraph (b) requires posting of the occupation code and the dust concentration for each valid sample as suggested by the commenter because these data are included in the report that MSHA provides to the operator. Accordingly, final paragraph (b) is the same as the proposal.

Final paragraph (c) is similar to the proposal. It provides that if using a CPDM, the person certified in sampling must, within 12 hours after the end of each sampling shift, print, sign, and post on the mine bulletin board a paper record (Dust Data Card) of the sample run. It further requires that this hard-copy record must include the data entered when the sample run was first programmed, and the following information: (1) The mine identification number; (2) the locations within the mine from which the samples were taken; (3) the concentration of respirable dust, expressed as an equivalent concentration reported and stored for each sample; (4) the sampling status conditions encountered for each sample; and (5) the shift length.

Final paragraph (c) does not include the term designated mine official because the final rule does not include the proposed CPDM Performance Plan section that would have required operators to designate a mine official to perform CPDM-related activities. Instead, the final rule requires that the CPDM-related duties under this section be performed by persons certified in sampling. Persons certified in sampling using a CPDM will be familiar with the operation of the CPDM and thus, require the least amount of time to perform these tasks. The certified person will need to perform the tasks for the mine's records of sampling performed. This, in conjunction with the revised sampling frequency contained in this final rule, makes it unnecessary to have a mine official perform these activities. The certified person can ensure the proper officials are aware of specific monitoring results that may require attention.

Final paragraph (c) also does not include the proposed requirement that would have required posting end-of-shift sampling results within 1 hour of the end of the shift. During the comment period, MSHA specifically requested comment on the proposed requirement for posting information on sampling results and miners' exposures on the mine bulletin board. Several commenters expressed concern that it was unrealistic to post end-of-shift sampling results within 1 hour of the end of the shift. One commenter pointed out that up to two hours may elapse between an oncoming crew's entrance into the mine and the ending shift's exit from the mine if the operator hot-seats the shift change. This commenter stated that this two-hour time span would require the hiring of additional health technicians to be able to post the samples within 1 hour. Another commenter stated it was too burdensome to require posting within 1 hour. Another commenter saw no value in requiring sampling results to be posted within an hour of the end of the shift because the CPDM-wearer would have left the mine by the time the results were posted, and therefore would not know the results until the next scheduled shift; also miners on the oncoming shift would already be in the mine before the data were posted.

After reviewing the comments, MSHA determined that posting within 1 hour of the end of the shift was not necessary and requiring an operator to post the results from each sampling shift within 12 hours after the end of the sampling shift adequately protects miners. Posting the results from each sampling shift within 12 hours ensures that miners and their representatives are informed of the results in a timely manner. The 12-hour time frame is sufficient to have the results from the monitored shifts available for review prior to the miners returning to the same shift worked the next calendar day.

Final paragraph (c) clarifies that a paper record (Dust Data Card that is programmed in the CPDM) of the sample run must be printed, signed, and posted. The paper record provides information for miners to review until the operator receives and posts the MSHA report referenced in final paragraph (a).

Proposed § 70.211(c) would have required certain sampling information to be posted. However, it did not provide the means by which the information was to be posted.

One commenter recommended that sampling results be offered personally, including the option of having the results mailed to the miner who wore the CPDM during the sampling shift. In response to this comment, MSHA emphasizes that the final rule continues the Agency's occupational and area sampling program. Because sampling under the final rule is not personal, the data collected is intended to benefit all miners who work in the area of the sample location, not just the miner who wore the CPDM. Accordingly, the final rule does not adopt this recommendation.

Final paragraph (c) does not include provisions that were in: Proposed (c)(1)(iv), which would have required posting the total amount of exposure accumulated by the sampled occupation during the shift; proposed (c)(1)(v), which would have required posting the monitored occupation code, where applicable; and proposed (c)(1)(vi), which would have required posting the reasons for voiding any sample. These proposed provisions are not included in the final rule because the information will be included on the paper record (Dust Data Card) which is posted for each sample run when samples are collected using a CPDM. MSHA did not receive comments on proposed (c)(1)(i)–(c)(1)(vii).

Proposed paragraph (c)(1)(viii), which would have required posting any other information required by the District Manager, is not included in the final rule. One commenter did not support proposed (c)(1)(viii) which would have allowed the District Manager to require posting of additional information. MSHA determined that allowing the District Manager to require posting of additional information is unnecessary since all relevant information will be available on the paper record (Dust Data Card).

Final paragraph (c)(3) uses the term equivalent concentration instead of equivalent concentration in milligrams per cubic meter of air. This clarification conforms to the definition in § 70.2 and its use in other sections of the final rule. Final paragraph (c)(3) also includes a clarification that, when using a CPDM, the concentration of respirable dust that must be documented in the record is the concentration which is ''reported and

stored for'' each sample. The addition of the phrase ''reported and stored for'' emphasizes that the dust concentration is reported by and stored in the CPDM's memory, allowing the paper record (Dust Data Card) which is part of the CPDM's internal programming, to be printed and posted, as required.

Final paragraph (c)(4) is new and requires the paper record to include the sampling status conditions encountered for each sample. The proposal would have required the reason for voiding any sample to be posted. The proposed posting requirement corresponded to the sampling information that the operator would have been required to submit to MSHA under proposed § 70.210(f). Proposed § 70.210(f) would have required an operator to transmit error data file information to MSHA. Error data file information referred to the information that was provided by the CPDM as error codes. Essentially, the error codes were an indication that the sampling conditions changed from the CPDM's set parameters. For example, changes in the degree of tilt, heater temperature, pump flowrate, mine temperature, or pump back pressure, that were outside of the unit's set parameters, resulted in error codes. While some of these error codes or changes in sampling conditions could have resulted in a sample being voided by MSHA, it was not necessarily an indication of a void sample. Technically, under the proposal, an operator would not have been able to post the reason for voiding any sample since only MSHA may void samples. However, commenters had the misunderstanding that error codes always indicated a void or unusable sample. Essentially, the commenters understood that MSHA was referring to the error codes as the reason for voiding any sample and noted as such in their comments that many CPDM samples would be voided due to the presence of error codes.

During the rulemaking, the CPDM manufacturer, after discussion with NIOSH, changed the reference in the approved CPDM product literature from error codes to status conditions. The status conditions that occur during sampling, like the error codes, are only indicated by the CPDM when the sampling conditions changed from the CPDM's set parameters. This terminology change by the CPDM manufacturer addressed mine operators' misunderstanding that the error codes were always an indication of a void or unusable sample. Consistent with this change by the CPDM manufacturer, and as discussed previously under final § 70.210(f), operators must transmit to MSHA the sampling status conditions rather than the proposed error codes. In addition, to correspond with the sampling status conditions that are transmitted in accordance with final § 70.210(f), final paragraph (c)(4) requires an operator to post the sampling status conditions rather than post the reason for voiding any sample. MSHA's evaluation of the sample record, including the sampling status conditions, will determine which samples, if any, may be voided. Final paragraph (c)(4) accurately reflects MSHA's intent that posting of the sampling information was designed to provide miners with timely sampling and exposure information. Providing miners the sampling status conditions allows miners to determine if the sample reported accurately represents the conditions under which that particular sample was collected, thereby increasing their confidence in the operators' monitoring program.

Proposed paragraph (c)(2) is not included in the final rule. It would have required posting the weekly accumulated exposure (WAE) and the weekly permissible accumulated exposure (WPAE) for each occupation sampled in an MMU at the end of the last sampling shift of the work week, within 2 hours. Posting the WAE and WPAE would have provided miners with the total amount of coal mine dust accumulated during the work week, as well as the maximum amount of accumulated exposure to coal mine dust permitted to be received during a normal work week. One commenter stated that posting within 2 hours is too restrictive and recommended posting at least 1 hour before the start of the next sampling shift. As noted elsewhere in this preamble under final § 70.2, the final rule does not contain any requirements associated with the WAE and WPAE.

Final § 70.211(d) is redesignated and changed from proposed § 70.211(c)(3). It provides that the information required by paragraph (c) of this section must remain posted until receipt of the MSHA report covering the respirable dust samples. Under the proposal, the information required by paragraph (c) would have been required to be posted for at least 15 calendar days. The final rule's requirement to post the information until the MSHA report is received ensures that sampling information is available for the entire interim period between the time the CPDM sampling results are electronically transmitted to MSHA and the time that the operator receives the MSHA report, which could exceed the proposed 15 calendar days. As discussed earlier, MSHA anticipates that most reports will be received by the operator in a timely manner, however, there may be occurrences where the MSHA report is unexpectedly delayed. If there were a delay in providing the report to the operator, the Agency wants to ensure that miners and their representatives continue to have relevant, timely sampling data until MSHA's consolidated report is available and posted. MSHA did not receive any comments on this provision.

15. Section 70.212 Status Change Reports

Final § 70.212 is derived from existing § 70.220. Like proposed § 70.212, it addresses status change reports. One commenter expressed general support for the proposal. Other commenters stated that the proposal was unnecessary because operators are required to notify MSHA of mine status changes under existing § 41.12.

Sections 70.212 and 41.12 are not duplicative. Section 41.12 requires only that operators notify the Agency of changes to the legal identity of the operator, but contains no requirement that operators report changes that affect their respirable dust sampling obligations. Section 70.212 serves a different purpose than § 41.12 and is included in the final rule.

Final § 70.212, like the proposal, requires an operator to report any change in operational status of the mine, mechanized mining unit, or designated area that affects the respirable dust sampling requirements of part 70 to the MSHA District Office or to any other MSHA office designated by the District Manager. It further requires that an operator must report the status changes in writing or electronically within 3 working days after the status change has occurred.

One commenter objected to the provision in proposed paragraph (a) that permits the District Manager to designate an MSHA office other than the District Office to which status change reports must be made. The commenter stated that allowing District Managers to designate an alternate office could lead to miscommunications that result in reporting errors. In response, MSHA notes that proposed and final paragraphs (a) are consistent with existing § 70.220(a), which contains an same requirement. MSHA received no information from commenters that reporting errors have occurred and the Agency is otherwise unaware of any reporting errors due to the provision. Also, MSHA received no comment on the proposal to permit electronic submissions of status change reports.

Final § 70.212(b), like the proposal, defines each specific operational status. MSHA received no comments on proposed paragraph (b) and it is finalized as proposed.

Proposed § 70.212(c) is not included in the final rule. It would have required the designated mine official to report status changes that affect the operational readiness of any CPDM within 24 hours after the status change had occurred. One commenter was concerned with the recordkeeping burden associated with proposed § 70.212(c). Under the proposed rule, because operators were required to sample DOs in each MMU during every production shift, it was particularly important for MSHA to remain informed of circumstances affecting the operational readiness or availability of an operator's CPDMs needed for sampling. Examples of status changes affecting operational readiness of a CPDM included a malfunction or breakdown of a CPDM or failure to have a spare CPDM available for required sampling. However, the sampling requirement for each DO in each MMU in final § 70.208 requires sampling each calendar quarter on consecutive normal production shifts until 15 valid representative samples are taken, rather than the proposed requirement to sample every shift. Given that the operator is permitted to collect the required 15 consecutive samples at any time during the calendar quarter, the rationale for the proposal, to inform MSHA of circumstances that affect the operational readiness of the CPDM, no longer applies. Under final § 70.204, the certified person will perform the necessary examination, testing and set-up procedures, and external maintenance to ensure the operational readiness of the CPDM before the sampling shift on which it will be used.

B. 30 CFR Part 71—Mandatory Health Standards—Surface Coal Mines and Surface Work Areas of Underground Coal Mines

1. Section 71.1 Scope

Final § 71.1, like the proposal, states that part 71 sets forth mandatory health standards for each surface coal mine and for the surface work areas of each underground coal mine subject to the Federal Mine Safety and Health Act of 1977, as amended.

2. Section 71.2 Definitions

Act

The final rule, like the proposal, defines Act as the Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164 and Public Law 109–236.

Active Workings

Final § 71.2, like the proposal, makes no change to the existing definition of active workings.

Approved Sampling Device

The final rule, like the proposal, is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Certified Person

Final § 71.2 makes nonsubstantive changes to the existing definition of certified person. It does not include the parenthetical text following the references to §§ 71.202 and 71.203.

Coal Mine Dust Personal Sampler Unit (CMDPSU)

The final rule, like the proposal, is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Concentration

Final § 71.2, like the proposal, makes no change to the existing definition of concentration.

Continuous Personal Dust Monitor (CPDM)

The final rule, like the proposal, is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Designated Work Position (DWP)

Final § 71.2 is similar to the proposal. It defines *designated work position* (DWP) as a work position in a surface coal mine or surface work area of an underground mine designated for sampling to measure respirable dust generation sources in the active workings. Each DWP will be assigned a four-digit number assigned by MSHA identifying the specific physical portion of the mine that is affected, followed by a three-digit MSHA coal mining occupation code describing the location to which a miner is assigned in the performance of his or her regular duties.

The final definition includes nonsubstantive changes to the proposed definition and adds language in the first sentence to clarify the purpose of DWP sampling, i.e., to measure respirable dust generation sources in the active workings. MSHA received no comments on the proposed definition.

District Manager

Final § 71.2, like the proposal, makes no change to the existing definition of District Manager.

Equivalent Concentration

The final rule is changed from the proposal. It is changed consistent with changes made to the final part 70 definition as discussed elsewhere in the preamble related to final § 70.2.

MRE Instrument

Final § 71.2, like the proposal, makes no change to the existing definition of MRE instrument.

MSHA

Final § 71.2, like the proposal, makes no change to the existing definition of MSHA.

Normal Work Shift

Final § 71.2, like the proposal, makes no change to the existing definition of normal work shift.

Quartz

The final rule is changed from the proposal. It is changed consistent with changes made to the final part 70 definition as discussed elsewhere in the preamble related to final § 70.2.

Representative Sample

The final rule is substantially similar to the proposal. It defines *representative sample* as a respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels in the working environment of the DWP performing normal duties. The final definition is identical to the proposed definition except that the language, ''expressed as an equivalent concentration'' is added. The added text clarifies that each respirable dust sample measurement must be converted to an equivalent concentration as defined under this final § 71.2.

MSHA received one comment on the proposed definition. The commenter stated that there was no need to define representative samples and that MSHA should modify its sampling methodology such that personal samples, rather than occupational samples, are taken.

With respect to the commenter's recommendation that MSHA replace the occupational sampling methodology with personal sampling, MSHA addresses this comment elsewhere in the preamble under final § 70.201. In addition, a definition for representative sample ensures that respirable dust samples accurately reflect the amount of dust to which miners are exposed, i.e., the dust concentration levels in the working environment of the DWP performing normal work duties. Without a definition, operators could sample miners at times when they

perform work duties that under-represent, or bias, miners' dust exposures. Thus, samples could under-represent, or bias, miners' dust exposure. Therefore, under the final rule, respirable dust samples must be taken while the DWP is engaged in normal work duties. The final definition of representative samples will provide protection for miners' health by allowing MSHA to objectively evaluate the functioning of operators' dust controls and the adequacy of operators' approved plans.

Respirable Dust

Final § 71.2 makes nonsubstantive changes to the existing definition of respirable dust. It is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Secretary

Final § 71.2 makes nonsubstantive changes to the existing definition of Secretary. It is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Surface Area

Final § 71.2, like the proposal, makes no change to the existing definition of surface area.

Surface Coal Mine

Final § 71.2, like the proposal, makes no change to the existing definition of surface coal mine.

Surface Installation

Final § 71.2, like the proposal, makes no change to the existing definition of surface installation.

Surface Work Area of an Underground Coal Mine

Final § 71.2, like the proposal, makes no change to the existing definition of surface work area of an underground coal mine.

Surface Worksite

Final § 71.2, like the proposal, makes no change to the existing definition of surface worksite.

Valid Respirable Dust Sample

For clarification, the final rule revises the definition under existing § 71.2 for a *valid respirable dust sample* to mean a respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

The final definition adds language to clarify that for CPDM samples, the data files are ''electronically'' transmitted to MSHA, and not physically transmitted like samples collected with the CMDPSU. The proposed rule did not include this clarification.

Work Position

Final § 71.2, like the proposal, defines work position as an occupation identified by an MSHA three-digit code describing a location to which a miner is assigned in the performance of his or her normal duties. The final definition ensures that MSHA can properly correlate each dust sample with the work location, position, and shift from which it was obtained. The definition is consistent with the Agency's practice of identifying the specific position being sampled. MSHA did not receive comments on the proposal.

3. Section 71.100 Respirable Dust Standard

Final § 71.100(a) is changed from the proposal. It requires that each operator continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed, as measured with an approved sampling device and expressed in terms of an equivalent concentration, at or below: (1) 2.0 milligrams of respirable dust per cubic meter of air (mg/m^3) and (2) 1.5 mg/m^3 as of August 1, 2016.

Final paragraph (a)(1) is the same as proposed paragraph (a)(1). It retains the existing standard of 2.0 mg/m^3 on the effective date of this final rule. Final paragraph (a)(2) is renumbered from proposed paragraph (a)(3) and changes the date on which the 1.5 mg/m^3 standard is effective from the proposed 12 months to 24 months after the effective date of the final rule.

Unlike proposed paragraph (a)(2), the final rule does not the final rule does not require that the standard be lowered to 1.7 mg/m^3 6 months after the effective date of the final rule, or to 1.0 mg/m^3 24 months after the effective date of the final rule.

MSHA received several comments on the proposed 1.0 mg/m^3 standard. The comments were the same or similar to those on proposed § 70.100. Those comments, along with MSHA's rationale for final paragraphs (a) and (b) are discussed elsewhere in this preamble under § 70.100.

4. Section 71.101 Respirable Dust Standard When Quartz Is Present

Final § 71.101(a), like proposed § 71.101(a), requires that each operator must continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which each miner in the active working of each mine is exposed at or below 0.1 mg/m^3 (100 micrograms per cubic meter of air or μg/m^3) as measured with an approved sampling device and expressed in terms of an equivalent concentration.

Final § 71.101(b), like proposed § 71.101(b), requires that when the equivalent concentration of respirable quartz dust exceeds 100 μg/m^3, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed as measured with an approved sampling device and in terms of an equivalent concentration at or below the applicable respirable dust standard. It also states that the applicable dust standard is computed by dividing the percent of quartz into the number 10. It further requires that the application of this formula must not result in an applicable dust standard that exceeds the standard established by § 71.100(a).

Final paragraphs (a) and (b) are consistent with existing § 71.101. The existing standard protects miners from exposure to respirable quartz by requiring a reduced respirable dust standard when the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. The existing standard is based on a formula that was prescribed by the Department of Health, Education and Welfare (now DHHS). The formula, which applies when a respirable coal mine dust sample contains more than 5.0 percent quartz, is computed by dividing 10 by the concentration of quartz, expressed as a percentage. The formula results in a continuous reduction in the respirable dust standard as the quartz content of the respirable dust increases over 5 percent (i.e., the higher the percentage of quartz, the lower the reduced respirable dust standard). The standard in final paragraph (a) is derived from the existing formula which was designed to limit a miner's exposure to respirable quartz to 0.1 mg/m^3 (100 μg/m^3-MRE), based on the existing 2.0 mg/m^3 respirable dust standard.

MSHA received several comments on the proposed § 71.101. The comments were the same or similar to those on proposed § 70.101. Those comments, along with MSHA's rationale for final paragraphs (a) and (b) are discussed elsewhere in this preamble under § 70.101. The feasibility of § 71.101 is discussed elsewhere in this preamble under Section III.C.

5. Section 71.201 Sampling; General And Technical Requirements

Final § 71.201, like the proposal, addresses general and technical sampling requirements concerning operator sampling. One commenter stated that operator sampling is not credible and that MSHA should be responsible for all compliance sampling. This comment is addressed elsewhere in this preamble under § 70.201.

Final paragraph (a) is changed from the proposal. It requires that each operator take representative samples of the concentration of respirable dust in the active workings of the mine as required by this part with an approved CMDPSU. On February 1, 2016, the operator may use an approved CPDM if the operator notifies the District Manager in writing that an approved CPDM will be used for all DWP sampling at the mine. The notification must be received at least 90 days before the beginning of the quarter in which CPDMs will be used to collect the DWP samples. The term representative samples is defined in final § 71.2. The proposal would have required that each operator take representative samples of the concentration of respirable dust in the active workings of the mine as required by this part.

The final rule clarifies that the operator may use one type of approved sampling device while conducting DWP sampling. If operators will be conducting DWP sampling using the CPDM rather than the CMDPSU, the operators must notify MSHA of their intent to do so. This clarification ensures that operators do not switch between sampling devices on successive quarterly sampling periods, or use both sampling devices during the same sampling period. The 90-day notification period allows MSHA sufficient time to modify MSHA's health computer system to accept CPDM electronic records for all DWPs located at the mine.

Some commenters stated that only the miner needs to be sampled to get a miner's exposure. This comment is addressed elsewhere in this preamble under § 70.201(c).

Final paragraph (b), like the proposal, requires that sampling devices be worn or carried directly to and from the DWP to be sampled. Paragraph (b) also requires that sampling devices remain with the DWP and be operational during the entire shift, which includes the total time spent in the DWP and while traveling to and from the DWP being sampled. It further requires that if the work shift to be sampled is longer than 12 hours and the sampling device is a CMDPSU, the operator must switch-out the unit's sampling pump prior to the 13th-hour of operation; and, if the sampling device is a CPDM, the operator must switch-out the CPDM with a fully charged device prior to the 13th-hour of operation. Paragraph (b), which applies to DWPs, is consistent with final § 70.201(c), which applies to MMUs and DAs. The rationale for paragraph (b) is the same as that for, and is discussed under, final § 70.201(c) of this preamble. Paragraph (b) is unchanged from the proposal.

Final paragraph (c), like the proposal, requires that if using a CMDPSU, one control filter must be used for each shift of sampling. It further requires that each control filter must: (1) Have the same pre-weight data (noted on the dust data card) as the filters used for sampling; (2) remain plugged at all times; (3) be used for the same amount of time, and exposed to the same temperature and handling conditions as the filters used for sampling; and, (4) be kept with the exposed samples after sampling and in the same mailing container when transmitted to MSHA. MSHA received no comments on the proposal.

Final paragraph (c)(4) is changed from the proposal to clarify that the control filter must be in the same mailing container as the exposed samples when transmitted to MSHA. Paragraphs (c)(1)–(4) are identical to final § 70.201(d)(1)–(4). The rationale for paragraphs (c)(1)–(4) is discussed under final § 70.201(d)(1)–(4) of this preamble.

Final paragraph (d), like the proposal, requires that records showing the length of each normal work shift for each DWP be made and retained for at least six months and be made available for inspection by authorized representatives of the Secretary and the representative of miners and submitted to the District Manager when requested in writing. Paragraph (d) is similar to final § 70.201(e).

One commenter stated that production shift records are unnecessary and excessively burdensome. This comment and the rationale for paragraph (d) are discussed under final § 70.201(e) of this preamble. Paragraph (d) is unchanged from the proposal.

Final paragraph (e), like the proposal, requires that upon request from the District Manager, the operator must submit the date and time any respirable dust sampling required by this part will begin. It further requires that this information must be submitted at least 48 hours prior to scheduled sampling. Paragraph (e) is identical to final § 70.201(f).

One commenter stated that the requirement creates an excessive burden on MSHA. This comment and the rationale for paragraph (e) are discussed under final § 70.201(f) of this preamble. Paragraph (e) is unchanged from the proposal.

Final paragraph (f), like the proposal, requires that upon written request by the operator, the District Manager may waive the rain restriction for a normal work shift as defined in § 71.2 for a period not to exceed two months, if the District Manager determines that: (1) The operator will not have reasonable opportunity to complete the respirable dust sampling required by this part without the waiver because of the frequency of rain; and, (2) the operator did not have reasonable opportunity to complete the respirable dust sampling required by this part prior to requesting the waiver. Paragraph (f) is identical to the existing requirements. MSHA received no comments on the proposal. Paragraph (f) is unchanged from the proposal.

Final paragraph (g) is substantially the same as the proposal. It requires that operators using CPDMs must provide training to all miners expected to wear the CPDM. It makes a nonsubstantive change that the training must be completed prior to a miner wearing the CPDM, as opposed to prior to a miner ''being required to wear the CPDM,'' and then every 12 months thereafter.

Final paragraphs (g)(1)–(4) are similar to proposed paragraphs (g)(1)–(5). Proposed paragraph (g)(2) would have required miners to be instructed on how to set up the CPDM for compliance sampling. One commenter stated this was unnecessary and was concerned that it could lead to persons who are not certified performing functions that require certification to perform. In response, the final rule requires mine operators to have certified persons set up the CPDM for compliance. Therefore, training all miners on how to set up the CPDM for compliance sampling is not necessary. Accordingly, the final rule does not include this proposed provision.

Paragraph (g)(1) is similar to proposed (g)(5). Like the proposal, it requires that the training include the importance of monitoring dust concentrations and properly wearing the CPDM. Paragraph (g)(1) makes a conforming change. The proposal would have required training on the importance of ''continuously'' monitoring dust concentrations. Since continuous monitoring is not required by the final rule, the term ''continuously'' is not included in paragraph (g)(1).

Final paragraph (g)(2) is the same as proposed (g)(1). It requires that the training include explaining the basic features and capabilities of the CPDM.

Final paragraph (g)(3), like the proposal, requires that the training include discussing the various types of information displayed by the CPDM and how to access that information.

Final paragraph (g)(4), like the proposal, requires that the training include how to start and stop a short-term sample run during compliance sampling.

The training requirements of paragraphs (g)(1)(4) are identical to the training requirements of final § 70.201(h)(1)(4). One commenter stated that the training requirements create an excessive burden on mine operators. This comment and the rationale for paragraphs (g)(1)–(4) are discussed under final § 70.201(h)(1)–(4) of this preamble.

Final paragraph (h), like the proposal, requires that an operator keep a record of the CPDM training at the mine site for 24 months after completion of the training. It also provides that an operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. It further requires that upon request from an authorized representative of the Secretary, Secretary of HHS, or representative of miners, the operator must promptly provide access to any such training records. Final paragraphs (h)(1)–(3) require the record to include the date of training, the names of miners trained, and the subjects included in the training.

Paragraph (h) makes a non-substantive change by replacing the proposed term ''2 years'' with ''24 months.''

Final paragraphs (h)(1)–(3) are new and clarify that the record must contain sufficient information for an authorized representative of the Secretary, Secretary of HHS, or miners' representative to determine that the operator has provided CPDM training in accordance with requirements in paragraph (g). Like final § 70.201(i), this is the type of information that is generally required for all training records to establish that the training has occurred.

The record requirements of paragraph (h) are identical to final § 70.201(i). One commenter stated that the proposed recordkeeping requirement is too burdensome. This comment and the rationale for paragraph (h) are discussed elsewhere in this preamble under final § 70.201(i).

6. Sections 71.202 Certified Person; Sampling and 71.203 Certified Person; Maintenance and Calibration

Final §§ 71.202 and 71.203 are identical to final §§ 70.202 and 70.203. Comments on proposed §§ 71.202 and 71.203 were the same as comments on proposed §§ 70.202 and 70.203. The comments and MSHA's rationale are discussed elsewhere in this preamble under §§ 70.202 and 70.203.

7. Section 71.204 Approved Sampling Devices; Maintenance and Calibration

Final § 71.204 is identical to final § 70.204. Comments on proposed § 71.204 were similar to comments on proposed § 70.204. Comments on proposed § 71.204 and MSHA's rationale are discussed elsewhere in this preamble under final § 70.204.

8. Section 71.205 Approved Sampling Devices; Maintenance and Calibration

Final § 71.205 is identical to final § 70.205, except that it does not exclude operators of certain anthracite mining operations from performing the on-shift examination required by § 71.205(b)(1). The rationale for not requiring the examination in underground anthracite mines does not apply to surface coal mines and surface work areas of underground coal mines subject to part 71 requirements. Comments on proposed § 71.205 were similar to comments on proposed § 70.205. Comments and MSHA's rationale for § 71.205 are discussed elsewhere in this preamble under final § 70.205.

9. Section 71.206 Quarterly Sampling

Final § 71.206 is similar to proposed § 71.207. The final rule does not include requirements for a CPDM Performance Plan that were proposed in § 71.206. The proposed Plan was substantially similar to the CPDM Performance Plan in proposed § 70.206. Comments on proposed § 71.206 were the same or similar to those on proposed § 70.206. Comments and MSHA's rationale for not including the proposal in the final rule are discussed elsewhere in this preamble under § 70.206.

Final § 71.206 revises the existing requirements on bimonthly sampling of designated work positions (DWP) under existing § 71.208. The title of § 71.206, ''Quarterly sampling,'' is changed from the proposal's title, ''Sampling of designated work positions,'' to be consistent with the required quarterly sampling frequency.

Final paragraph (a) is like proposed § 71.207(a) but contains conforming changes. It requires that each operator must take one valid representative sample from the DWP during each quarterly period. The term ''valid representative sample'' is discussed elsewhere in this preamble under § 70.206. Paragraph (a) further provides that the quarterly periods are: January 1–March 31; April 1–June 30; July 1–September 30; and October 1–December 31.

One commenter stated that because strip mining is very dusty, the proposal should not reduce sampling from bimonthly to quarterly. Rather, oversight and sampling should increase.

The final rule, like the proposal, reduces the existing DWP sampling frequency from bimonthly to quarterly. As discussed below in final paragraph (c), the final rule requires operators to sample an increased number of specific work positions as DWPs, which have historically been associated with higher dust concentrations, at a frequency to ensure that all miners in those positions are protected.

Final paragraph (b) is redesignated from and is similar to proposed § 71.207(h). Paragraph (b) clarifies the time frame for implementation when there is a change in the standard. It requires that when the respirable dust standard is changed in accordance with § 71.101, the new standard will become effective 7 calendar days after the date of the notification of the change by MSHA. Under proposed § 71.207(h), a new standard would have gone into effect on the first normal work shift following the operator's receipt of notification after the respirable dust standard is changed in accordance with § 71.101. MSHA received no comments on the proposal.

Paragraph (b) is substantially similar to §§ 70.206(c), 70.207(b), 70.208(c), 70.209(b), and 90.207(b), except for conforming changes. The rationale for paragraph (b) is discussed elsewhere in this preamble under § 70.208(c). Final paragraph (b) does not include the requirements in proposed § 71.207(h)(1) and (2). Proposed § 71.207(h)(1) would have required that if all samples for the DWP from the most recent quarterly sampling period do not exceed the new standard (reduced due to the presence of quartz), the operator would begin sampling of the DWP on the first normal work shift during the next quarterly period following notification from MSHA of the change in the standard. Proposed § 71.207(h)(2) would have required that if any sample from the most recent quarterly sampling period exceeds the new standard (reduced due to the presence of quartz), the operator must make necessary adjustments to the dust control parameters within three days, and then collect a sample from the affected DWP on a normal work shift. It

further provided that the sample would be treated as a normal quarterly sample. MSHA did not receive comments on the proposal.

Proposed § 71.207(h)(1) and (2) is similar to proposed §§ 70.207(c)(1) and (2), and 70.209(b)(1) and (2). The rationale for not including proposed § 71.207(h)(1) and (2) in the final rule is discussed elsewhere in this preamble under § 70.206(c)(1) and (2).

Final paragraph (c) is redesignated from and is substantially similar to proposed § 71.207(b). Paragraph (c) requires that DWP samples must be collected at locations to measure respirable dust generation sources in the active workings. In addition, paragraph (c) clarifies that the ''specific'' work positions at each mine where DWP samples must be collected include: (1) Each highwall drill operator (MSHA occupation code 384); (2) bulldozer operators (MSHA occupation code 368); and (3) other work positions designated by the District Manager for sampling in accordance with § 71.206(m). Like the proposal, the final rule requires each highwall drill operator to be sampled since historical sampling data and MSHA experience indicate that these positions have the greatest potential of being overexposed to respirable quartz and respirable coal mine dust. Bulldozer operators are DWPs since they have similar risks and need additional protection. Under circumstances specified in final paragraph (d) concerning multiple work positions, discussed below, some bulldozer operators could be exempt from sampling requirements. Also, the District Manager could designate other work positions for sampling in accordance with final paragraph (c)(3), which is discussed below. Final paragraph (c) will provide improved health protection for miners in work positions that have increased risks of overexposure to respirable dust and quartz.

MSHA received several comments on the proposal. One commenter stated that the front end loader operator should be included as a DWP. Another commenter stated that the proposal was too aggressive because designating all high wall drill operators and bulldozer operators as DWPs attempts to correct an overexposure problem that does not exist.

According to MSHA's historical sampling data and experience, high wall drill operators and bulldozer operators, but not the front end loader operator, are the work positions with the greatest potential for overexposure to respirable dust and respirable dust when quartz is present. However, the District Manager may designate the front end loader operator for sampling in accordance with paragraph (m) of this section discussed later in this section.

Final paragraph (d) is redesignated from and is the same as proposed § 71.207(c) except for conforming changes. It requires that operators with multiple work positions specified in paragraphs (c)(2) (bulldozer operators) and (c)(3) (other work positions) of this section must sample the DWP exposed to the greatest respirable dust concentration in each work position performing the same activity or task at the same location at the mine and exposed to the same dust generation source. It also requires each operator to provide the District Manager with a list identifying the specific work positions where DWP samples will be collected for: (1) Active mines—by October 1, 2014; (2) new mines—within 30 calendar days of mine opening; (3) DWPs with a change in operational status that increases or reduces the number of active DWPs—within 7 calendar days of the change in status.

The final rule takes into consideration the fact that some bulldozer operator positions, or other work positions designated by the District Manager, may have variable respirable dust exposure. Under those circumstances, assuming the positions perform similar work, the mine operator must sample only the DWP exposed to the greatest respirable dust concentration. For example, if two bulldozer operators push overburden at the same location, the operator must sample the bulldozer operator exposed to the greatest concentration of respirable dust to ensure that other miners performing similar tasks at the same location are protected from excessive dust exposure. However, as another example, if some bulldozer operators push overburden and others perform reclamation work, the mine operator must sample one bulldozer operator exposed to the greatest concentration of respirable dust pushing overburden and one bulldozer operator exposed to the greatest concentration of respirable dust performing reclamation work. A respirable dust sample for the designated bulldozer operator performing reclamation work does not constitute a representative sample of the working environment for the bulldozer operators pushing overburden.

One commenter stated that the miner assigned to the DWP needed to be sampled, not just the work position, to get the miner's dust exposure. The final rule maintains the historical practice of sampling the occupation of the DWP. This comment is addressed further elsewhere in this preamble under § 70.201(c).

Some commenters stated that requiring an operator to submit a list identifying the specific work locations to the District Manager is too burdensome.

Paragraph (d) ensures that the appropriate DWPs are identified for sampling. In addition, the time given to operators to identify and submit the list should reduce or eliminate any perceived burden. With the addition of new DWP designations in this final rule, the quarterly sampling requirements of DWPs provide significantly more sampling than is required under the existing standards.

Final paragraph (e) is redesignated from and is substantially similar to proposed § 71.207(d). It states that each DWP sample must be taken on a normal work shift. Final paragraph (e) requires that if a normal work shift is not achieved, the respirable dust sample must be transmitted to MSHA with a notation by the person certified in sampling on the back of the dust data card stating that the sample was not taken on a normal work shift. The term ''person certified in sampling'' replaces the term ''certified person'' in the proposal. Paragraph (e) further provides that when a normal work shift is not achieved, the sample for that shift may be voided by MSHA. It also specifies that MSHA will use any sample, regardless of whether a normal work shift was achieved, that exceeds the standard by at least 0.1 mg/m^3, to determine the equivalent concentration for that occupation. The text ''in the determination of the equivalent concentration for that occupation'' replaces the term ''to determine compliance with this part'' in the proposal.

Comments on proposed § 71.207(d) are the same as comments on proposed § 70.207(d). The comments and MSHA's rationale are discussed elsewhere in this preamble under § 70.206(d).

Final paragraph (f) is redesignated from and is the same as proposed § 71.207(e). It requires that unless otherwise directed by the District Manager, DWP samples must be taken by placing the sampling device as follows: (1) Regarding an equipment operator, on the equipment operator or on the equipment within 36 inches of the operator's normal working position; (2) regarding a non-equipment operator, on the miner assigned to the DWP or at a location that represents the maximum concentration of dust to which the miner is exposed.

Final paragraph (f) is the same as the existing standard except for a

nonsubstantive change to replace ''designated work position'' with ''DWP.'' MSHA did not receive any comments on the proposal.

Final paragraph (g) is similar to proposed § 71.207(m) and (n). Like the proposal, it requires that upon notification from MSHA that any valid representative sample taken from a DWP to meet the requirements of paragraph (a) of this section exceeds the standard, the operator must, within 15 calendar days of notification, sample that DWP each normal work shift until five valid representative samples are collected. It further requires that the operator must begin sampling on the first normal work shift following receipt of notification.

Proposed § 71.207(m) would have required five valid samples if any sample taken with a CMDPSU exceeded the standard but was below the applicable ECV in proposed Table 71–1. Proposed § 71.207(n) would have required five valid samples if any sample taken with a CPDM exceeded the standard but was below the applicable ECV in proposed Table 71–2. It would also have required the operator to review the adequacy of the approved CPDM Performance Plan and submit any plan revisions to the District Manager for approval within 7 calendar days following posting of the end-of-shift equivalent concentration on the mine bulletin board.

One commenter stated that any plan revisions should be provided to the miners' representative.

Respirable dust control plans for DWPs that are submitted by the operator for approval are required to include the corrective actions taken to reduce the respirable dust concentrations to at or below the standard. The requirements for the operator to submit these respirable dust control plans is contained in § 71.300. Section 71.300 also includes a requirement that an operator must notify a representative of the miners at least 5 days prior to submitting the plan for approval.

Final paragraph (g) is essentially the same as existing § 71.208(d) except for nonsubstantive changes. The existing standard requires that upon notification from MSHA that any respirable dust sample taken from a DWP exceeds the dust standard, the operator must take five samples from that DWP within 15 calendar days beginning on the first normal work shift following notification.

Final paragraph (g), unlike proposed § 71.207(m) and (n), does not include a specific reference to either the CMDPSU or CPDM. Rather, final paragraph (g) includes requirements for samples taken with any approved sampling device. It also does not include the unnecessary references in proposed (m) and (n) regarding a sample being below the applicable ECV in proposed Tables 71–1 or 71–2. In addition, it does not include the requirements in proposed § 71.207(n) to review and revise the CPDM Performance Plan. As discussed in this section and elsewhere in this preamble under § 70.206, the CPDM Performance Plan is not included in the final rule.

Final paragraph (h) is similar to proposed § 71.207(k). It requires that when a valid representative sample taken in accordance with this section meets or exceeds the ECV in Table 71–1 that corresponds to the applicable standard and particular sampling device used, the operator must take the actions listed in paragraphs (h)(1) through (3). Unlike proposed § 71.207(i), there is no violation under final paragraph (i) if one operator full-shift sample exceeds the ECV in Tables 71–1 or 71–2 that corresponds to the applicable standard and particular sampling device used. Although the Secretary has determined that a single full-shift measurement of respirable coal mine dust accurately represents atmospheric conditions to which a miner is exposed during such shift, MSHA has concluded that a noncompliance determination based on a single full-shift sample will only be made on MSHA inspector samples. With respect to operator samples, MSHA reevaluated its enforcement strategy under the proposed rule. MSHA determined that the proposal would have resulted in little time for an operator to correct noncompliance determinations based on an operator's single sample. The final rule ensures that an operator takes corrective actions on a single sample overexposure. This will protect miners from subsequent overexposures.

Proposed § 71.207(k) would have required that during the time for abatement fixed in a citation for violation of the standard, the operator would have to: (1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter; (2) submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to at or below the standard; (3) upon approval by the District Manager, implement the proposed corrective actions and then sample the affected DWP on each normal work shift until five valid representative samples are taken; and (4) if using a CPDM to meet the requirements of paragraph (a) of this section, review the adequacy of the approved CPDM Performance Plan and submit any plan revisions to the District Manager for approval within 7 calendar days following posting of the end-of-shift equivalent concentration on the mine bulletin board.

Final paragraph (h)(1), like proposed § 71.207(k)(1), requires that the mine operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Comments on proposed § 71.207(k)(1) were identical or similar to those on proposed § 70.207(g)(1) and (i)(1). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for final paragraph (h)(1), under § 70.206(e)(1) and (h)(1).

Paragraph (h)(2) is substantially similar to proposed § 71.207(k)(3). It requires that the mine operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (h)(2) is consistent with existing § 71.201(d), which requires a mine operator to take corrective action to lower the concentration of respirable dust. Paragraph (h)(2) clarifies that corrective action needs to be taken immediately to protect miners from overexposures. Comments on proposed § 71.207(k)(3) were similar to those on proposed § 70.207(g)(3) and (i)(2). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for final paragraph (h)(2), under § 70.206(e)(2).

Paragraph (h)(3) is new and is similar to proposed § 70.207(i)(3). Final paragraph (h)(3) requires that the mine operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners.

Final paragraph (h)(3) significantly simplifies the proposal. For example, final paragraph (h)(3) only requires a record of the corrective action taken. Proposed § 71.206(k)(2) and (3) would have required more corrective action submissions to the District Manager, and dust control plan submissions and plan revisions to the District Manager

regarding the DWP identified in the citation. Under proposed § 71.207(k)(2) and (3), each time a citation would have been issued, the operator would have been required to submit proposed corrective actions to the District Manager and obtain approval before corrective actions could be implemented. As one of the conditions to terminate the citation under proposed § 71.207(l), the operator would have had to submit, for District Manager approval, a proposed dust control plan or changes to an approved plan for that DWP. Under final paragraph (h), operators are only required to take immediate corrective action and make a record of the action taken. Like the existing rule, a respirable dust control plan for the DWP is required under § 71.300 only after a citation is issued and terminated.

The rationale for final paragraph (h)(3) is the same as that for final § 70.206(e)(3). The requirement to make and retain a record of corrective actions ensures that miners are not subject to subsequent overexposures and that the corrective actions taken are effective. When a dust control plan or changes to an approved plan are submitted to the District Manager for approval, the operators and MSHA are able to check the required records to ensure that the control measures used to abate the violation are entered in the dust control plan for the DWP identified in the citation.

In addition, final paragraph (h)(3) provides useful information to a mine operator, miners, and MSHA regarding the corrective actions taken and whether the dust control parameters in the approved ventilation plan are adequate. The record of the corrective actions taken should be made by a responsible mine official, such as the mine foreman or equivalent mine official. Records and certification of corrective action taken help identify excessive dust concentrations so they can be addressed appropriately to better ensure miners' health. In addition, retaining records at the mine for at least one year is consistent with many existing MSHA record retention standards, particularly the proposal's incorporation of existing § 75.363(d). Record retention is necessary to help MSHA, the mine operator, and the miners' representative identify problems with dust controls and ensure that excessive dust concentrations are corrected. The cost associated with the record requirement is shown in Chapter IV of the Regulatory Economic Analysis (REA).

Unlike proposed § 71.207(k)(2), final paragraph (h) does not include operators to submit corrective actions to the District Manager for approval. Comments on proposed § 71.207(k)(2) were the same as or similar to those on proposed § 70.207(g)(2). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(h)(4).

In addition, unlike proposed § 71.207(k)(4), final paragraph (h) does not require operators to review and revise a CPDM Performance Plan. As discussed in this section and elsewhere in this preamble under § 70.206, the final rule does not include the proposed requirements for a CPDM Performance Plan.

For consistency between the sampling requirements of the final rule, final paragraphs (h)(1)–(3) are identical to final § 70.206(e)(1)–(3) regarding bimonthly sampling of MMUs, § 70.207(d)(1)–(3) regarding bimonthly sampling of designated areas, § 70.208(e)(1)–(3) regarding quarterly sampling of MMUs, § 70.209(c)(1)–(3), regarding quarterly sampling of designated areas, and except for conforming changes, § 90.207(c)(1)–(3) regarding quarterly sampling.

Final paragraph (i) is changed from proposed § 71.207(i). It states that noncompliance with the standard is demonstrated during the sampling period when: (1) Two or more valid representative samples meet or exceed the ECV in Table 71–1 (Excessive Concentration Values (ECV) Based on Single, Full–Shift CMDPSU/CPDM Concentration Measurements) that corresponds to the applicable standard and the particular sampling device used; or (2) The average for all valid representative samples meets or exceeds the ECV in Table 71–2 (Excessive Concentration Values (ECV) Based on the Average of Five Full-Shift CMDPSU/CPDM Concentration Measurements) that corresponds to the applicable standard and the particular sampling device used.

In the March 8, 2011, request for comments (76 FR 12649), MSHA stated that the Agency was interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the ECV.

Commenters expressed concern that compliance determinations would be made on the basis of a single-shift measurement. Proposed § 71.207(i) would have required that if using a CMDPSU, no valid single-shift sample equivalent concentration meet or exceed the ECV that corresponds to the standard in proposed Table 71–1; or, if using a CPDM, no valid end-of-shift equivalent concentration meet or exceed the applicable ECV in proposed Table 71–2.

In response to comments, final paragraph (i) provides two different methods by which compliance determinations can be made. The rationale for final paragraphs (i)(1) and (2) is the same as that for final §§ 70.206(f)(1) and (2), 70.207(e)(1) and (2), 70.208(f)(1) and (2), 70.209(d)(1) and (2), and 90.207(d)(1) and (2), and is discussed elsewhere in this preamble under § 70.208(f)(1) and (2).

For consistency between the sampling requirements of the final rule, final paragraphs (i)(1) and (2) are the same as, except for conforming changes, final §§ 70.206(f)(1) and (2), 70.207(e)(1) and (2), 70.208(f)(1) and (2), 70.209(d)(1) and (2), and 90.207(d)(1) and (2).

Comments on the ECVs in proposed Table 71–1 are discussed elsewhere in this preamble under § 70.208(f). In addition, a detailed discussion on the derivation of the ECVs in both final Tables 71–1 and 71–2 is included in Appendix A of the preamble. Comments that questioned the accuracy of a single sample in making a compliance determination are addressed elsewhere in this preamble under § 72.800.

Final paragraph (j) is redesignated from proposed § 71.207(j) and makes clarifying and conforming changes. It provides that upon issuance of a citation for a violation of the standard, paragraph (a) of this section will not apply to that DWP until the violation is abated and the citation is terminated in accordance with final paragraphs (k) and (l) of this section. Paragraph (j) clarifies that a violation must be abated and the citation must be terminated before resuming quarterly sampling. Final paragraphs (k) and (l) are discussed below.

Final paragraph (j) includes an exception to allow the District Manager flexibility to address extenuating circumstances that would affect sampling. An example of extenuating circumstances would occur when an uncorrected violation would require abatement sampling that continues into the next sampling period.

Final paragraph (j) is similar to existing § 71.208(d). MSHA did not receive comments on the proposal.

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (j) is the same as final §§ 70.206(g), 70.207(f), 70.208(g), 70.209(e), and 90.207(e).

Final paragraph (k) is similar to proposed § 71.207(k). It requires that upon issuance of a citation for violation of the standard, the operator must take the following actions sequentially: (1) Make approved respiratory equipment available; (2) immediately take

corrective action; (3) record the corrective actions; and (4) conduct additional sampling. The actions required by paragraph (k) are similar to those in proposed § 71.207(k)(1)–(4) discussed under paragraph (h). In addition, paragraph (k) includes the term ''sequentially'' to ensure that corrective actions are taken in the order they are listed.

Final paragraph (k)(1), like proposed § 71.207(k)(1), requires that the mine operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Comments on proposed § 71.207(k)(1) were identical or similar to those on proposed § 70.207(g)(1) and (i)(1). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for final paragraph (h)(1), under § 70.206(e)(1) and (h)(1).

Paragraph (k)(2) is substantially similar to proposed § 71.207(k)(3). It requires that the mine operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (k)(2) clarifies that corrective action needs to be taken immediately to protect miners from overexposures. Comments on proposed § 71.207(k)(3) were similar to those on proposed § 70.207(g)(3) and (i)(2). The comments are consolidated and discussed elsewhere in this preamble, together with the rationale for final paragraph (k)(2), under § 70.206(e)(2) and (h)(2).

Paragraph (k)(3) is new. It requires that the mine operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. It further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. Like final paragraph (h)(3), final paragraph (k)(3) significantly simplifies the proposal. Proposed § 71.206(k)(2) and (3) would have required more corrective action submissions to the District Manager, and dust control plan submissions and plan revisions to the District Manager regarding the DWP identified in the citation. Under proposed § 71.207(k)(2) and (3), each time a citation would have been issued, the operator would have been required to submit proposed corrective actions to the District Manager and obtain approval before corrective actions could be implemented. As one of the conditions to terminate the citation under proposed § 71.207(l), the operator would have had to submit, for District Manager approval, a proposed dust control plan or changes to an approved plan for that DWP. Under final paragraph (k), operators are only required to take immediate corrective action and make a record of the action taken. Like the existing rule, a respirable dust control plan for the DWP is required under § 71.300 only after a citation is issued and terminated.

The rationale for final paragraph (k)(3) is the same as that for final § 70.206(h)(3). The requirement to make and retain a record of corrective actions ensures that miners are not subject to subsequent overexposures and that the corrective actions taken are effective. When a dust control plan or changes to an approved plan are submitted to the District Manager for approval, the operators and MSHA are able to check the required records to ensure that the control measures used to abate the violation are entered in the dust control plan for the DWP identified in the citation.

It provides useful information to a mine operator, miners, and MSHA regarding the corrective actions taken and whether the dust control parameters in the approved ventilation plan are adequate. The record of the corrective actions taken should be made by a responsible mine official, such as the mine foreman or equivalent mine official. Records and certification of corrective action taken help identify excessive dust concentrations so they can be addressed appropriately to better ensure miners' health. In addition, retaining records at the mine for at least one year is consistent with many existing MSHA record retention standards, particularly the proposal's incorporation of existing § 75.363(d). Record retention is necessary to help MSHA, the mine operator, and the miners' representative identify problems with dust controls and ensure that excessive dust concentrations are corrected. The cost associated with the record requirement is shown in Chapter IV of the Regulatory Economic Analysis (REA).

The rationale for final paragraph (k)(3) is the same as that discussed in final paragraph (h) and in final § 70.206(e)(3).

Final paragraph (k)(4) is similar to proposed § 71.207(k)(3). It requires that the mine operator begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected DWP on consecutive normal production shifts until five valid representative samples are taken. Paragraph (k)(4) is consistent with existing § 71.201(d), which requires a mine operator to sample each normal work shift until five valid respirable dust samples are taken. In addition, it requires that the sampling must begin within 8 calendar days after the date the citation is issued. Under proposed § 71.207(k)(2) and (3), sampling would have begun after submission to and approval by the District Manager of the corrective actions taken. The rationale for final paragraph (k)(4) is the same as that for final § 70.206(h)(4) and is discussed elsewhere in this preamble under § 70.206(h)(4).

Unlike proposed § 71.207(k)(4), final paragraph (k) does not require operators to review and revise a CPDM Performance Plan. As discussed in this section and elsewhere in this preamble under § 70.206, the final rule does not include the proposed requirements for a CPDM Performance Plan.

In addition, unlike proposed § 71.207(k)(2), final paragraph (k) does not require operators to submit corrective actions to the District Manager for approval. Comments on proposed § 71.207(k)(2) were the same as or similar to those on proposed § 70.207(g)(2). The comments are consolidated and discussed elsewhere in this preamble under § 70.206(h)(4).

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (k) is the same as final §§ 70.206(h), 70.207(g), 70.208(h), 70.209(f), and 90.207(f).

Final paragraph (l) is changed from proposed § 71.207(l). It provides that a citation for a violation of the standard will be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is at or below the standard. It does not include the proposed requirement that within 15 calendar days after receipt of the sampling results from MSHA, the operator must submit to the District Manager for approval a proposed dust control plan for the DWP in the citation or notice or proposed changes to the approved dust control plan as prescribed in § 71.300. It also does not include the requirement that the proposed plan parameters or proposed changes reflect the control measures used to abate the violation. The proposed requirement to submit a dust control plan for the DWP with proposed plan parameters or revisions is included in final § 71.300, which also requires a description of the specific control

measures used to abate the dust violation. Therefore, the same requirements did not need to be included in final paragraph (l). MSHA did not receive any comments on the proposal.

Final paragraph (m) is similar to proposed § 71.207(f). It allows the District Manager to designate for sampling under this section additional work positions at a surface coal mine and at a surface work area of an underground coal mine where a concentration of respirable dust exceeding 50 percent of the standard in effect at the time the sample is taken, or a concentration of respirable dust exceeding 50 percent of the standard established in accordance with § 71.101 has been measured by one or more MSHA valid representative samples.

One commenter stated that other work positions designated by the District Manager should include any work sites where miners are exposed to dust, such as preparation plants, load out facilities, stockpiles, barges, and other areas at surface coal mines and surface areas of underground coal mines.

According to MSHA's historical sampling data and experience, highwall drill operators and bulldozer operators are the work positions with the greatest potential of overexposure to respirable dust and respirable dust when quartz is present. However, under the final rule, the District Manager may designate additional work positions for DWP sampling provided that either criteria in paragraph (m) are met.

One commenter expressed concern that the proposal permits the District Manager to greatly expand the sampling requirements. The final rule, like the proposal, is derived from existing § 71.208(e). Under the existing standard, the District Manager has the discretion to designate the work positions at each surface coal mine and surface work area of an underground coal mine for respirable dust sampling. That discretion continues under the final rule. Final paragraph (m) is consistent with the existing standard and does not expand the existing District Manager's authority.

Final paragraph (n) is redesignated from and is essentially the same as proposed § 71.207(g) except for nonsubstantive and conforming changes. It provides that the District Manager may withdraw from sampling any DWP designated for sampling under paragraph (m) of this section upon finding that the operator is able to maintain continuing compliance with the standard. It further provides that this finding will be based on the results of MSHA and operator valid representative samples taken during at least a 12-month period. MSHA did not receive comments on the proposal.

10. Section 71.207 Respirable Dust Samples; Transmission by Operator

Final § 71.207 is similar to proposed § 71.208. Like the proposal, final § 71.207 revises existing § 71.208(a) and (c), and adds a new paragraph (f). It also redesignates, without change, existing § 71.208(b), (d) and (e).

Final § 71.207(a) is substantially similar to the proposal. It requires the operator, if using a CMDPSU, to transmit within 24 hours after the end of the sampling shift all samples collected, including control filters, in containers provided by the manufacturer of the filter cassette to MSHA's Pittsburgh Respirable Dust Processing Laboratory, or to any other address designated by the District Manager. Final paragraph (a) clarifies that operators must include the control filters with the dust sample transmissions to the Respirable Dust Processing Laboratory. As explained in the preamble to the proposed rule, MSHA uses control filters to improve measurement accuracy by eliminating the effect of differences in pre- and post-exposure laboratory conditions, or changes introduced during storage and handling of the filter cassettes. Including control filters with the dust samples ensures that the appropriate control filter is associated with the appropriate sample filter.

Final § 71.207(b), like proposed § 71.208(b), is the same as existing § 71.209(b).

Final § 71.207(c) is substantially the same as proposed § 71.208(c). It requires that a person certified in sampling must properly complete the dust data card that is provided by the manufacturer for each filter cassette. It further requires that the dust data card must have an identification number identical to that on the filter cassette used to take the sample and be submitted to MSHA with the sample. It also requires that each dust data card must be signed by the certified person who actually performed the examinations during the sampling shift and must include that person's MSHA Individual Identification Number (MIIN).

As an example, the certified person who performs the required examinations during the sampling shift is the individual responsible for signing the dust data card and verifying the proper flowrate, or noting on the back of the card that the proper flowrate was not maintained. Since the certified person who conducted the examination is most knowledgeable of the conditions surrounding the examination, final paragraph (c) requires that certified person sign the dust data card. In addition, the MIIN number requirement is consistent with MSHA's existing policy. Since July 1, 2008, MSHA has required that the certified person section of the dust data card include the MIIN, a unique identifier for the certified person, instead of the person's social security number. To ensure privacy and to comport with Federal requirements related to safeguarding personally identifiable information, MSHA has eliminated requirements to provide a social security number.

Finally, paragraph (c) provides that respirable dust samples with data cards not properly completed may be voided by MSHA. This is a change from the proposal. The proposal would have required that, regardless of how small the error, an improperly completed dust data card must be voided by MSHA. Final paragraph (c) allows MSHA flexibility in voiding an improperly completed dust data card. MSHA received no comments on this proposed provision.

Final § 71.207(d) and (e) are the same as proposed § 71.208(d) and (e) and are the same as existing § 71.209(d) and (e).

Final § 71.207(f) is changed from the proposal. It requires that, if using a CPDM, the person certified in sampling must validate, certify, and transmit electronically to MSHA within 24 hours after the end of the sampling shift all sample data file information collected and stored in the CPDM, including the sampling status conditions encountered when sampling each DWP; and, not tamper with the CPDM or its components in any way before, during, or after it is used to fulfill the requirements of 30 CFR part 71, or alter any sample data files. It further requires that all CPDM data files transmitted electronically to MSHA must be maintained by the operator for a minimum of 12 months.

Final paragraph (f) includes the term ''person certified in sampling'' rather than ''designated mine official.'' This change makes paragraph (f) consistent with final paragraph (c). Final paragraph (f) also includes a clarification that CPDM data files are ''electronically'' transmitted to MSHA, unlike the physical transmission of samples collected with the CMDPSU. As a clarification to the proposal, final paragraph (f) does not require ''error data file information'' to be transmitted to MSHA. Rather, final paragraph (f) requires ''the sampling status conditions encountered when sampling'' to be transmitted to MSHA. This terminology is consistent with that used in the

approved CPDM manufacturer's literature. The clarification ensures that conditions that may occur during the sampling shift (e.g., flowrate, temperature, humidity, tilt indicator, etc.) and that may affect sampling results are recorded and transmitted to MSHA.

The requirement in final paragraph (f) that the certified person not tamper with the CPDM or alter any CPDM data files is new. It is consistent with the requirements for CMDPSUs, under existing § 71.209(b) and final § 71.207(b), which provide that an operator not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of 30 CFR part 71. It is also consistent with the requirement in 30 CFR 74.7(m) that a CPDM be designed to be tamper-resistant or equipped with an indicator that shows whether the measuring or reporting functions of the device have been tampered with or altered. MSHA has a long history of taking action against persons who have tampered with CMDPSUs or altered the sampling results obtained from such devices in order to protect miners' health and ensure the integrity of MSHA's dust program. Therefore, a similar requirement is included for samples taken with a CPDM.

Final § 71.207 and its rationale are identical to final § 70.210, discussed elsewhere in this preamble under § 70.210. One commenter expressed general support for the proposal.

11. Section 71.208 Respirable Dust Samples; Report to Operator; Posting

Final § 71.208 is similar to proposed § 71.209. It is substantially the same as final § 70.211, and the rationale is discussed elsewhere in this preamble related to final § 70.211. Additional rationale, as appropriate, is discussed below.

Final paragraph (a)(4) is new and provides that the MSHA report will include the average equivalent concentration of respirable dust for all valid samples. This provision is included to ensure that operators, as well as miners and their representatives, are informed as to the average concentration of respirable dust for all valid samples.

Final § 71.208(b) is changed from proposed § 71.209(b). It requires that, upon receipt, the operator must post on the mine bulletin board the data contained in the MSHA report for at least 31 days.

The proposal would have required posting for 46 days. As explained in the preamble to the proposed rule, existing standards under parts 70 and 71 require operators to post sampling data for 50 percent of the specified sampling period (e.g., 31 days is 50 percent of the bimonthly sampling period specified in existing § 71.208(a)). Since proposed § 71.207 would have required operators to take DWP samples every calendar quarter, posting the sampling data for 46 days, which is approximately 50 percent of a quarterly sampling period, would have been consistent with existing posting requirements.

One commenter stated that the purpose and benefit of posting sampling data for 46 days was not apparent. In response to this comment, MSHA concludes that posting for the existing 31 days is adequate time for interested parties to review the data. The 31-day time period is consistent with the posting requirement under final § 70.211(b). Another commenter expressed general support for the proposed posting, stating that the specified data should be available to all interested parties at any time. In response, MSHA agrees that the data required to be posted under final paragraph (b) provides valuable sampling data. However, the final rule does not include the commenter's suggestion that the data should be permanently available to interested parties. The Agency believes that the 31-day posting period provides adequate opportunity for interested persons to review the information.

Final § 71.208(c)(1), (c)(2), (c)(3), and (c)(5) are redesignated from proposed § 71.209(c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(v), respectively. Final paragraph (c) does not include provisions that were in proposed § 71.209(c)(1)(iv) and (c)(1)(vi) for the same reasons that identical provisions in proposed § 70.211(c)(1)(vi) and (c)(1)(viii) are not included in final § 70.211(c), i.e., the information that would have been required will already be included on the paper record (Dust Data Card) for each sample run when samples are collected using a CPDM.

Final paragraph (c)(2), like the proposal and existing § 71.210(a)(2), requires that the paper record include the DWP at the mine from which the samples were taken. MSHA received no comment on the proposed provision.

Final paragraph (c)(3) is the same as final § 70.211(c)(3) and its rationale is the same as that stated in the preamble discussion for final § 70.211(c)(3).

Final paragraph (c)(4) is new and requires that the paper record include the ''sampling status conditions encountered for each sample.'' The rationale for this provision is the same as that stated in the preamble discussion for final § 70.211(c)(4).

Final § 71.208(d) is changed from proposed § 71.209(c)(2). It requires the information required by paragraph (c) to remain posted until receipt of the MSHA report covering the respirable dust samples collected using a CPDM. Proposed § 71.209(c)(2) would have required the information under proposed § 71.209(c)(1)(i)–(c)(1)(vi) to be posted for at least 46 calendar days. The rationale for paragraph (d) is the same as that stated in the preamble discussion of final § 70.211(d). MSHA received no comments on this provision.

12. Section 71.209 Status Change Reports

Final § 71.209 is similar to proposed § 71.210 and existing § 71.220. One commenter expressed general support for the proposal.

Final § 71.209(a), like the proposal, provides an operator the option of reporting changes electronically, as an alternative to reporting the changes in writing. MSHA received no comment on this provision. Final paragraph (a) is similar to final § 70.212(a). The rationale for paragraph (a) is discussed elsewhere in this preamble under final § 70.212(a).

Final § 71.209(b) is the same as the proposal and existing § 71.220(b). MSHA received no comment on this provision and it is finalized as proposed.

Unlike proposed § 71.210(c), final § 71.209 does not require the designated mine official to report status changes affecting the operational readiness of any CPDM within 24 hours after the status change occurred. One commenter was concerned with the recordkeeping burden associated with proposed § 71.210(c). After reviewing the commenter's concern, MSHA has determined that proposed requirement is not necessary and, therefore, it is not included in the final rule.

13. Section 71.300 Respirable Dust Control Plan; Filing Requirements

Final § 71.300 contains requirements for operators who must file a dust control plan when they receive a citation for a DWP sample. It requires that, within 15 calendar days after the termination date of a citation for a violation of the standard, the operator must submit to the District Manager for approval a written respirable dust control plan for the DWP identified in the citation. It further requires that the respirable dust control plan and any revisions must be suitable to the conditions and the mining system of the coal mine and be adequate to

continuously maintain respirable dust to at or below the standard at the DWP identified in the citation.

Final § 71.300(a) is changed from proposed § 71.300(a). Under the proposal, in order to terminate a citation for a violation of the respirable dust standard, the operator would have had to first submit, to the District Manager for approval, a dust control plan or revisions to the dust control plan after abatement sampling results showed compliance. MSHA has reevaluated the requirements of proposed § 71.300(a). MSHA has concluded that final paragraph (a) will allow for faster abatement of a citation because, under final § 71.207(g)(2), immediate action must be taken to correct the violation and the citation may be terminated before submitting a plan or revisions to the District Manager for approval. Final paragraph (a) is consistent with existing § 71.300(a) which does not require a plan submission as a requirement to terminate a citation.

Also, final paragraph (a) replaces the reference to § 71.207(l) with ''Within 15 calendar days after the termination date of a citation for violation of the applicable standard.'' This is consistent with similar wording in existing § 71.300. It simplifies the wording to specify the time frame and circumstance that initiate the requirement for the operator to submit the plan for District Manager approval, rather than reference to another regulatory section. Final paragraph (a), like the proposal, provides that the plan requirements are specific to the DWP identified in the citation. In addition, the 15-day requirement to submit the plan for MSHA approval is the same as the proposed and existing rules.

One commenter expressed concern that proposed § 71.300 was requiring another plan.

MSHA is not requiring a new plan. The requirement to submit a respirable dust control plan after termination of a citation for violation of the dust standard has been in existence since 1980. No other comment was received on proposed paragraph (a) and the final rule includes only the above nonsubstantive revisions.

Final paragraph (a)(1), like the proposal, requires that the mine operator notify the representative of miners at least 5 days prior to submitting a proposed respirable dust control plan, or proposed revisions to an existing plan, to the District Manager for approval. It also requires that, if requested, the operator must provide a copy to the representative of miners at the time of the 5-day notification. Final paragraph (a)(2), like the proposal, requires the operator to make available for inspection by the miners' representative a copy of the proposed respirable dust control plan and any proposed revisions that have been submitted for District Manager approval. Final paragraph (a)(3), like the proposal, requires a copy of the proposed respirable dust control plan, and any proposed revision, to be posted on the mine bulletin board at the time of submittal to the District Manager for approval. It further requires that the proposed plan or revision remain posted on the bulletin board until approved, withdrawn, or denied. Final paragraph (a)(4), like the proposal, allows the miners' representative, following receipt of a proposed dust control plan or proposed revision, to submit timely written comments to the District Manager for consideration during the plan review process. Final paragraph (a)(4), like the proposal, also requires the District Manager to provide operators with a copy of the miners' representatives' comments when requested to do so.

One commenter stated that, to allow for sufficient review and comment, the operator should be required to provide a copy of the respirable dust control plan to the miners' representative, without the representative having to request it, at least 10 days before the operator's submission to the District Manager.

MSHA agrees from experience that input from miners on proposed dust control measures in plans is important. However, providing a copy of the proposed plan, or revisions, to the miners' representative within the 5-day notification period, upon request, allows sufficient time and opportunity for the miners' representative to become familiar with the proposed plan or revisions and to discuss and resolve any issues prior to its submission to the District Manager for approval. In addition, the requirement is consistent with procedures for submitting plans in other MSHA standards. Final paragraphs (a)(1)–(4) ensure that miners' representatives have access to copies of proposed plan documents for their review, that miners are made aware of the contents of the proposed plan, and that all parties to the dust control plan process are aware of each other's positions on potential issues.

Final § 71.300(b), like the proposal, requires that each respirable dust control plan include at least the following: (1) The mine identification number and DWP number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name, address, and telephone number of the principal officer in charge of health and safety at the mine; (2) the specific DWP at the mine to which the plan applies; (3) a detailed description of the specific respirable dust control measures used to abate the violation of the respirable dust standard; and (4) a detailed description of how each of the respirable dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place, and manner the control measures will be used. Except for nonsubstantive changes, the requirements of final paragraph (b)(1)–(4) are the same as existing § 71.300(b)(1)–(4). MSHA did not receive comments on these provisions and they are finalized as proposed.

14. Section 71.301 Respirable Dust Control Plan; Approval by District Manager and Posting

Final § 71.301(a), like the proposal, provides that the District Manager will approve respirable dust control plans on a mine-by-mine basis. It further provides that when approving respirable dust control plans, the District Manager must consider whether: (1) The respirable dust control measures would be likely to maintain concentrations of respirable coal mine dust at or below the standard; and (2) the operator's compliance with all provisions of the respirable dust control plan could be objectively ascertained by MSHA.

One commenter questioned why the criteria are not an MSHA internal document or published guideline, instead of a regulation.

Final paragraph (a)(1) is derived from existing § 71.301(a)(1). Under existing § 71.301(a)(1), the District Manager considers whether the dust control measures would likely maintain ''compliance with the respirable dust standard.'' Like the proposal, final paragraph (a)(1) clarifies that the District Manager's review will ensure that control measures in the plan would likely maintain respirable dust concentrations at or below the standard at the DWP identified in the citation so that concentrations do reach ECV levels. This clarification will improve protection for miners.

Final paragraph (a)(2), like the proposal, is the same as existing § 71.301(a)(2).

Final § 71.301(b), like the proposal, provides that MSHA may take respirable dust samples to determine whether control measures in the operator's plan effectively maintain concentrations of respirable coal mine dust at or below the standard. Final paragraph (b), like

the proposal, is derived from existing § 71.301(b). Paragraph (b) clarifies that MSHA sampling will ensure that control measures in the plan are effective at maintaining respirable dust concentrations at or below the standard. This clarification will improve protection for miners. MSHA did not receive comments on proposed paragraph (b) and it is finalized as proposed.

Final § 71.301(c), like the proposal, is the same as existing § 71.301(c).

Final § 71.301(d)(1), (2) and (3), like the proposal, requires that the approved respirable dust control plan and any revisions must be: Provided upon request to the representative of miners; made available for inspection by the representative of miners; posted on the mine bulletin board within 1 working day following notification of approval; and remain posted for the period that the plan is in effect.

Miners and their representatives play an important role in the plan approval process and need to be kept aware of the contents of the approved plan. Consistent with procedures for plan approval in other MSHA standards, final paragraphs (d)(1), (2), and (3) ensure that miners and their representatives have timely access to the approved plan or plan revisions following notification of approval. These provisions also ensure that miners and their representatives are informed of the respirable dust controls in the approved plan that should be in use at the mine. Posting on the mine bulletin board within 1 working day following notification of approval is a reasonable time and provides improved protection for miners.

MSHA did not receive comments on proposed paragraphs (d)(1)–(3) and they are finalized as proposed.

C. 30 CFR Part 72—Health Standards for Coal Mines

1. Section 72.100 Periodic Examinations

Final § 72.100(a), like the proposal, requires each operator of a coal mine to provide to each miner periodic examinations including chest x-rays, spirometry, symptom assessment, and occupational history at a frequency specified in this section and at no cost to the miner. The examinations are important for the early detection and prevention of disease.

Final paragraph (a)(1), like the proposal, requires each operator to use NIOSH-approved facilities to provide the examinations specified in final paragraph (a).

Final paragraph (a)(2) is new. It requires that the results of examinations or tests made pursuant to this section be furnished only to the Secretary of Labor, the Secretary of HHS, or, at the request of the miner, to the miner's designated physician.

Final paragraph (b), like the proposal, pertains to voluntary examinations. It requires that each operator provide the opportunity to have the examinations specified in paragraph (a) at least every 5 years to all miners employed at a coal mine. It also requires that the examinations be made available during a 6-month period that begins no less than 3.5 years and not more than 4.5 years from the end of the last 6-month period. Final paragraph (b) allows some flexibility for mine operators and approved facilities in scheduling examinations and is consistent with the time frames established in NIOSH's existing program. For example: If an operator provided examinations to miners during a 6-month period of July 1, 2009 to December 31, 2009, the operator would be notified by NIOSH by April 1, 2013, 3 months prior to July 1, 2013, to schedule the next 6-month period within which to offer miners the examinations.

Final paragraph (c) pertains to mandatory examinations and is the same as the proposed rule. It requires that for each miner who begins work at a coal mine for the first time, the operator must provide an examination specified in final paragraph (a). Final paragraph (c)(1) requires that the operator provide the initial examination no later than 30 days after beginning employment. Final paragraph (c)(2) requires the operator to provide a follow-up examination no later than 3 years after the initial examination in paragraph (c)(1). Final paragraph (c)(3) requires the operator to provide a follow-up examination no later than 2 years after the examination in paragraph (c)(2), if the chest x-ray shows evidence of pneumoconiosis or if the spirometry examination indicates evidence of decreased lung function. Paragraph (c)(3) also specifies that for this purpose, evidential criteria will be defined by NIOSH.

On March 8, 2011, MSHA issued in the **Federal Register** a request for comments (76 FR 12648). MSHA solicited comments on the periodic medical surveillance provisions in the proposed rule. The proposal would have required operators to provide an initial examination to each miner who begins work at a coal mine for the first time and then at least one follow-up examination after the initial examination.

Commenters generally supported periodic medical surveillance examinations for all coal miners including underground and surface coal miners. Most commenters also supported spirometry, occupational history, and symptom assessment examinations in addition to the X-ray examinations that are required by NIOSH's existing regulations at 42 CFR part 37 pertaining to Specifications for Medical Examinations of Underground Coal Miners. One commenter did not support adding more medical tests, including spirometry. Another commenter suggested that more frequent mandatory chest x-rays would be more beneficial than spirometry testing.

Final § 72.100 is consistent with the existing ''Coal Workers' X-Ray Surveillance Program'' administered by NIOSH. The Program was established under the Federal Coal Mine Health and Safety Act of 1969, as amended by Section 203(a) of the Mine Act (30 U.S.C. 843(a)). The existing NIOSH regulations, 30 CFR part 37, consist of specifications for giving, interpreting, classifying, and submitting chest X-rays for underground coal miners. According to 30 CFR 37.3, mandatory chest X-rays include an initial chest X-ray within 6 months of beginning employment, another chest X-ray 3 years later, and a third chest X-ray 2 years after the second if the miner is still engaged in underground coal mining and if the second chest X-ray showed evidence of category 1 or higher pneumoconiosis. In addition to these mandatory chest X-rays, mine operators are required to offer an opportunity for periodic, voluntary chest X-rays every 5 years.

Final § 72.100 is also consistent with the 1996 Dust Advisory Committee Report and 1995 NIOSH Criteria Document. The Advisory Committee Report unanimously recommended that, in addition to the chest X-rays at the time of employment and then at the specified intervals thereafter, spirometry and questionnaire data should be collected periodically during a miner's employment. The Advisory Committee also unanimously recommended that medical testing of underground coal miners should be extended to surface miners.

The NIOSH Criteria Document recommended that spirometric examinations be included in the medical screening and surveillance program for coal miners. NIOSH also recommended the inclusion of surface coal miners in medical screening and surveillance program.

Requiring operators to provide spirometry, symptom assessment, and occupational history, in addition to X-

rays, and include surface coal miners in the periodic examination requirement will provide increased protection of health for every coal miner. A spirometry examination complements a chest x-ray by detecting effects, other than pneumoconiosis, of dust on the lung, such as Chronic Obstructive Pulmonary Disease (COPD). COPD cannot be detected by a chest x-ray. A spirometry examination is the most practical screening tool to detect reduced lung function in miners, which is common evidence of COPD. Periodic chest x-rays and spirometry will enable early detection of pneumoconiosis and COPD, respectively, both of which are irreversible and, for miners who are subject to continued overexposure to respirable dust, progressive. Spirometry examination results would provide miners with the knowledge of an abnormal decline in lung function, which would enable them to be proactive in their approach to their health. In the absence of medical monitoring and early intervention, a miner may continue to be overexposed, allowing disease to progress so that the miner may suffer material impairment of health or functional capacity.

Surface coal miners are included in final § 72.100 because they too are at risk of developing pneumoconiosis and COPD as a result of exposure to respirable coal mine dust. MSHA data indicate that some occupations at surface mines (e.g., drill operators, bulldozer operators, and truck drivers) experience high exposure to respirable coal mine dust, including silica, and there are many former underground miners among surface miners with chest x-rays that show CWP. Surface miners, like underground miners, would benefit from the availability of periodic medical monitoring. It would provide them with information on the status of their health and enable them to take actions to prevent disease progression. For example, for miners at surface mines who are not provided any periodic examinations under existing regulations, a chest x-ray that shows evidence of pneumoconiosis under the final rule would allow them to exercise their rights to work in a less dusty job of the mine under 30 CFR part 90.

Some commenters stated that the proposal will cause confusion with the existing NIOSH X-ray surveillance program. These commenters stated that the NIOSH Program only covers chest X-rays for underground coal miners and that MSHA and NIOSH must coordinate the medical surveillance program to ensure a seamless program.

MSHA intends to work with NIOSH to coordinate each agency's regulatory requirements, where appropriate, and to implement a smooth transition to ensure medical examinations are provided to all coal miners under the CWHSP. Including these requirements in the final rule will allow MSHA to use its inspection and enforcement authority to protect miners' health and ensure that operators comply with the examination requirements.

One commenter stated that the proposal is not clear about who should review chest radiographs and suggested that they be reviewed by B-readers to ensure accuracy and consistency.

The final rule only requires that operators use NIOSH-approved facilities to provide the periodic examinations, but does not address who should review the chest x-rays. NIOSH regulations under 42 CFR part 37 provide specifications for giving, interpreting, classifying, and submitting chest x-rays. A discussion of NIOSH's B-reader program is included in Section III.A., Health Effects, of the preamble.

Some commenters stated that miners do not participate in NIOSH's surveillance program due to concerns that their private medical information will not be kept confidential. They also expressed concern with how the medical information will be used. One commenter referred to OSHA's asbestos rule that requires that the results of medical examinations be given to employers, and a NIOSH Criteria Document that recommends that medical findings for refractory ceramic fibers workers be provided to employers.

Final paragraph (a)(2) is responsive to commenters' concerns on confidentiality. It limits the persons who can be provided miners' examination and test results. Although MSHA will not routinely get results of a miner's examination or tests, there will be shared information when necessary. For example, MSHA will be informed when a miner's chest x-ray from a mandatory follow-up examination under final paragraph (c)(2) shows evidence of pneumoconiosis. This information is crucial so that MSHA can ensure that the operator provides the affected miner with a subsequent follow-up examination under final paragraph (c)(3) of this section. In addition, final paragraph (a)(2) is consistent with Federal privacy laws, such as HIPAA, the Privacy Act, and FOIA, which protect personal medical data from disclosure.

Many commenters supported mandatory medical monitoring, but for all coal miners. Some of these commenters stated that voluntary examinations exclude some miners and that such exclusion violates Section 101(a)(6)(A) of the Mine Act, which requires MSHA to set standards which most adequately assure that no miner will suffer material impairment of health or functional capacity. Other commenters stated that voluntary miner participation has not succeeded in improving disease prevention. Some commenters stated that mandatory participation by all miners would provide early diagnosis of disease and is the best tool to implement intervention measures and prevent disease progression. One commenter added that mandatory miner participation would provide a true measure of health under the existing 2.0 mg/m^3 standard and the opportunity to be proactive in stopping disease progression.

Some commenters supported voluntary examinations for miners and expressed concern that medical information may be used in a retaliatory manner against miners. One commenter objected to being subjected to radiation and medical testing as a result of any regulation.

MSHA does not believe that requiring mandatory medical examinations for all miners is appropriate. MSHA acknowledges the concerns of the commenters who believe that the voluntary program has not worked and deprives miners of examinations that could detect respiratory disease and information to address potential disease. However, as noted in Section III.A., Health Effects, of the preamble, although the numbers vary over time, the percentage of actively employed underground miners who volunteered for medical surveillance in NIOSH's Coal Workers' Health Surveillance Program (CWHSP) has increased from a low of approximately 20% in the 1990–1994 time period to approximately 43% in the 2005–2009 time period (see Table III–2).

MSHA also recognizes that periodic examinations, such as those required under final paragraph (b), are necessary for early detection of respiratory disease and early intervention to prevent its progression. However, MSHA is reluctant to require all miners to submit to medical examinations that they do not wish to undergo. MSHA is also reluctant to require miners to submit to the examinations when the miners may have concerns about the privacy and confidentiality of medical test records and follow-up evaluations. These concerns include medical test results that could be used to fire a miner, challenge claims for black lung benefits, or could be obtained as part of a Freedom of Information Act request.

One commenter stated that follow-up spirometry examinations should be repeated at least every 3 years. This commenter added that spirometry testing every 3 years would provide an opportunity for early identification of miners who have accelerated loss of lung function greater than that expected from aging alone, and would allow for interventional and preventive health strategies. In addition, this commenter stated that surveillance chest x-rays should be coordinated with the spirometry surveillance schedule, with the additional chest x-rays being obtained at 9 to 12 years' duration of coal mine employment and every 6 years thereafter.

Mandatory examinations provided in close proximity to when miners are first hired and first exposed to respirable coal mine dust are necessary in order to establish an accurate baseline of each miner's health. Miners may not recognize early symptoms of pneumoconiosis or COPD and, therefore, they might not be likely to seek medical assistance. A chronic respiratory symptom complex develops after prolonged exposure to respirable dust and includes chronic cough, phlegm development, and shortness of breath. However, several researchers have noted that the decline in lung function due to dust is non-linear, sometimes with much of the decline coming early in the miner's career, often in less than 3 years (Attfield and Hodous, 1992; Seixas et al., 1993). There are some individuals who respond adversely to respirable coal mine dust exposure relatively quickly, and it is important to identify those individuals early. A 3-year interval at the start of a miner's career will provide necessary information for evaluating the results of subsequent spirometry tests and final paragraph (c)(1) requires a mandatory follow-up examination be given 3 years after the miner's initial examination.

Final § 72.100 does not include the suggestion that additional chest radiographs be provided after 9 to 12 years of coal mine employment and every 6 years thereafter. The final rule is consistent with NIOSH regulations under 42 CFR 37.3(b)(2) and (b)(3). Both pneumoconiosis and COPD develop slowly. It is unusual, for example, for a miner to have a positive chest x-ray less than 10 years from first exposure to respirable coal mine dust. However, if a miner has a positive chest x-ray, it is important to intervene as promptly as possible for maximum health protection. An interval of 5 years or less between each miner's periodic spirometry examinations provides a reasonable opportunity to ensure detection of important declines in a miner's lung function due to dust exposure.

Final paragraph (d) is redesignated from proposed paragraph (d) and includes a clarification. It requires each mine operator to develop and submit for approval to NIOSH a plan in accordance with 42 CFR part 37 for providing miners with the examinations specified in paragraph (a) and a roster specifying the name and current address of each miner covered by the plan. The text ''in accordance with 42 CFR part 37'' was added to final paragraph (d) to provide a reference to corresponding NIOSH's requirements. The plan is essential to ensure that mine operators provide the examinations within the time frames established under this section and under 42 CFR part 37 and at an approved facility. The final requirement for medical examinations will allow for early detection and treatment and, to be effective, must be part of a comprehensive program designed to prevent further progression of early respiratory disease. The requirement for submitted plans to include a roster specifying the name and current address of each miner covered by the plan will provide NIOSH with the ability to ensure adequate notification of the availability of medical examinations to covered coal miners. NIOSH has found through its existing CWHSP that directly contacting coal miners who are due for a chest examination results in a higher participation rate. According to NIOSH, coal miners 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. NIOSH has requested that such rosters be provided since the early 1990s and almost all operators have complied; so this requirement would not create an additional burden for mine operators.

Some commenters stated that the content of the plan should be clarified. NIOSH originally published the requirements for such plans in 1978 (43 FR 33715) under 42 CFR 37.4, Plans for chest roentgenographic examinations. Most recent amendments to § 37.4 included changing the title of this section to Plans for chest radiographic examinations (77 FR 56718, September 13, 1978). This is the plan that is referenced in final paragraph (d).

Final paragraph (e), like the proposal, requires each mine operator to post the approved plan for providing periodic examinations specified in paragraph (a) on the mine bulletin board and to keep it posted at all times. Posting the approved plan on the mine bulletin board can help to improve miners' awareness of the plan, along with its purpose and provisions. This is the same requirement that exists in 42 CFR 37.4(e). MSHA received no comments on this provision, and this provision is finalized as proposed.

One commenter suggested that the proposal regarding the medical surveillance should be addressed in a separate rulemaking.

Rather than address medical monitoring separately, MSHA is including periodic examination requirements in this final rule as part of its comprehensive initiative to ''End Black Lung—Act Now!'' The Agency believes it is important to incorporate these requirements at this time to identify, prevent, and reduce the incidence of adverse and life-threatening respiratory diseases, including CWP, PMF, COPD, and emphysema, which result from occupational exposure to respirable coal mine dust.

2. Section 72.700 Respiratory Equipment; Respirable Dust

Final § 72.700 establishes requirements for operators to make available NIOSH-approved respiratory equipment, provide respirator training, and to keep training records. Final § 72.700 is the same as the proposal except for revisions to clarify final paragraph (c). Final § 72.700, like the proposal, is derived from existing § 70.300. It expands the scope of existing § 70.300 to include all coal mines, whether surface or underground, and includes coverage of part 90 miners.

Two commenters stated that final § 72.700 should require operators to establish and implement a comprehensive respiratory protection program similar to OSHA's program, which includes requirements for medical examinations and fit testing, as well as respirator maintenance, care, and storage.

In response, MSHA clarifies that the intent of the proposal was only to extend respiratory protection equipment coverage to persons at surface mines, persons at surface areas of underground mines, and part 90 miners and to provide equivalent health protection to all coal miners regardless of the type of mine at which they work. Extending coverage to part 90 miners is particularly important given the fact that they have medical evidence of the development of pneumoconiosis.

Another commenter suggested that the final rule should revise and update existing § 72.710, which incorporates by reference the American National

Standards Institute's (ANSI's) ''Practices for Respiratory Protection ANSI Z88.2–1969'' standard. The commenter stated that the 1969 ANSI standard is grossly outdated.

MSHA did not propose to modify the substance of § 72.710. The 1969 ANSI standard still provides sufficient guidance to mine operators for respiratory protection for coal miners in the limited situations specified in MSHA regulations. Additionally, MSHA's emphasis in the dust program is consistent with the Mine Act which does not permit the substitution of respirators in lieu of environmental and engineering controls.

Final § 72.700(a), like the proposal, requires respiratory protection equipment approved by NIOSH under 42 CFR part 84 (Approval of Respiratory Protective Devices) to be made available to all persons as required under parts 70, 71, and 90. In addition, it provides that the use of respirators must not be substituted for environmental control measures in the active workings. It also requires that each operator must maintain an adequate supply of respirators.

MSHA received a number of comments on this provision. One commenter supported the requirement that operators make respirators available to persons when their respirable dust exposure exceeds the standard. The commenter, however, stated the rule should clarify that operators are prohibited from offering respirators that are not NIOSH-approved. In response, final paragraph (a) is explicit in requiring that operators must make available respiratory equipment approved by NIOSH in accordance with 42 CFR part 84. Respirators that have not been approved by NIOSH under 42 CFR part 84 have not met the construction, performance, and respiratory protection thresholds established by NIOSH.

Many commenters offered a number of reasons why respirators, including powered air-purifying respirators (PAPRs), should be required as a primary or supplemental means of controlling a miner's exposure to respirable coal mine dust. Some commenters stated that respirators provide the most protective and cost-effective way to protect miners from respirable dust, especially in certain applications, such as on longwalls and at mines on a reduced standard due to the presence of quartz. Other commenters said that engineering and environmental controls alone cannot protect miners' health. Some commenters stated that respirators provide an added layer of health protection and ensure that miners take a proactive role in protecting their own health.

In addition, several commenters stated that MSHA should allow mine operators to use a hierarchy of controls to limit miners' exposure to coal mine dust. This hierarchy of controls consists of using engineering controls first, followed by administrative controls, and finally suitable respirators, including NIOSH-approved PAPRs. These commenters noted that MSHA permits the use of a hierarchy of controls in metal and nonmetal mines to control miners' exposure to diesel particulate matter. They also stated a rulemaking under section 101 of the Mine Act could be used to establish a hierarchy of controls and supersede the interim standard established by section 202(h) of the Mine Act which prohibits the use of respirators as a substitute for environmental controls in the active workings of the mine.

Some of these commenters stated that MSHA's failure to allow the use of respirators, such as PAPRs, as a temporary supplemental control is inconsistent with MSHA's 2000 and 2003 Plan Verification proposed rules previously issued under two different Administrations. These commenters noted that the previous proposed rules would have allowed the use of PAPRs in limited circumstances as a supplementary control. They further added that, even though MSHA had never considered PAPRs or any other respirator to be an engineering control, MSHA included a provision for PAPRs as a supplementary control in the previously proposed rules, in part, as a response by MSHA to a Petition for Rulemaking filed by the Energy West Mining Company. These commenters stated that MSHA failed to provide any explanation for rejecting the use of PAPRs as supplementary controls in the proposed rule and that MSHA's failure to do so is a violation of Section 555(e) of the Administrative Procedure Act. Finally, these commenters stated that PAPRs should be treated as environmental controls similar to environmentally controlled cabs that are allowed to be used on bulldozers or shuttle cars.

Other commenters stated that using respirators as a means of complying with the dust standard is contrary to the Mine Act and would provide miners with a false sense of protection. Some commenters cited the difficulty of wearing respirators in hot and sweaty jobs, and dusty, dirty conditions, including in low coal. One commenter stated that carrying a respirator adds an additional load to miners, who are already overburdened with other equipment that they must carry into the mine. The commenter further stated that allowing a mine operator to control a miner's exposure to respirable dust by the use of a respirator rather than engineering controls could result in dangerous concentrations of dust suspended in the atmosphere, increasing the risk of a coal dust explosion.

In the preambles to the 2000 and 2003 Plan Verification proposed rules, MSHA stated that the Agency was addressing the Energy West petition for rulemaking to allow the use of PAPRs as a supplemental means of compliance. In the preamble to the 2000 proposed rule, MSHA stated that the Agency would ''permit, under certain circumstances, the limited use of either approved loose-fitting PAPRs or verifiable administrative controls for compliance purposes'' (65 FR 42135). In the preamble to the 2003 proposed rule, MSHA stated that the Agency was proposing to ''permit the limited use of either approved PAPRs, administrative controls, or a combination of both, for compliance purposes, in those circumstances where further reduction of dust levels cannot be reasonably achieved using all feasible engineering controls'' (68 FR 10800). In so doing, MSHA emphasized that the Mine Act specifically prohibits using respirators as a substitute for environmental controls in the active workings of the mine because environmental or engineering controls are reliable, provide consistent levels of protection to a large number of miners, allow for predictable performance levels, can be monitored continually and inexpensively, and can remove harmful levels of respirable coal mine dust from the workplace (68 FR 10799). MSHA further stated that the proposed rule, which would expand the use of supplementary controls under limited circumstances to protect individual miners, ''is not a departure from the Agency's long-standing practice of relying on engineering controls to achieve compliance, since these measures would not be used as a substitute or replacement for engineering control measures in the active workings'' (68 FR 10800).

In the preamble to the 2010 proposed rule, MSHA noted that it had received comments on the 2000 and 2003 Plan Verification proposed rules that operators should be allowed to use respiratory equipment in lieu of environmental and engineering controls to achieve compliance with the proposed dust standards (75 FR 64446). In response, MSHA stated:

. . . proposed § 72.700(a) would retain the existing requirement that environmental controls be used as the primary means of complying with applicable dust standards. MSHA experience indicates that even when respirators are made available, miners may not use them because they can be uncomfortable and impractical to wear while performing work duties. In some cases, a miner may not be able to use a respirator due to health issues. General industrial hygiene principles recognize that engineering and environmental controls provide more consistent and reliable protection.

The final rule does not contain provisions to allow operators to use the hierarchy of controls or to use respirators, including PAPRs, as supplementary controls to achieve compliance with the respirable dust standards. As specified in Sections 201(b) and 202(h) of the Mine Act and since passage of the 1969 Coal Act, MSHA has enforced an environmental standard at coal mines; that is, the Agency samples the concentration of respirable dust in the mine atmosphere rather than the personal exposure of any individual. This is discussed elsewhere in the preamble under final § 70.201(c).

Engineering controls, also known as environmental controls, are the most protective means of controlling dust generation at the source. Used in the mining environment, engineering controls work to reduce dust generation or suppress, dilute, divert, or capture the generated dust. Well-designed engineering controls, such as environmentally controlled cabs, provide consistent and reliable protection to all workers because the controls are, relative to administrative controls and respirators, less dependent upon individual human performance, supervision, or intervention to function as intended.

The use of engineering controls as the primary means to control respirable dust in the mine atmosphere is consistent with Sections 201(b) and 202(h) of the Mine Act. Section 201(b) of the Mine Act states that the purpose of the dust standards is ''to provide, to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations in the mine atmosphere . . .'' (30 U.S.C. 841(b)). In addition, Section 202(h) of the Mine Act, and MSHA's existing respiratory equipment standard under 30 CFR 70.300, both explicitly state that ''[u]se of respirators shall not be substituted for environmental control measures in the active workings'' (30 U.S.C. 842(h)).

Final paragraph (a) is also consistent with the Dust Advisory Committees' unanimous recommendation that respiratory equipment should not be permitted to replace environmental control measures, but should continue to be provided to miners until environmental controls are implemented that are capable of maintaining respirable dust levels in compliance with the standard.

The final rule requires an operator to make respirators available to all persons whenever exposed to concentrations of respirable dust in excess of the levels required to be maintained. The use of approved respiratory equipment should be encouraged until the operator determines the cause of the overexposure and takes corrective actions.

NIOSH also recognized the importance of controlling miners' exposure to respirable coal mine dust by using environmental controls. NIOSH's 1995 Criteria Document recommends that engineering controls continue to be relied on as the primary means of protecting coal miners from respirable dust.

Under the final rule, operators must continue to engineer such dust out of the mine atmosphere in order to maintain ambient dust levels in the active workings at or below the standard. In the preambles to the 2000 and 2003 Plan Verification proposed rules, MSHA explained that its experience at that time was that there were limited situations where exposures could not be consistently controlled by available technologies (65 FR 42134; 68 FR 10798–10799, 10818). MSHA has determined that it is technologically feasible for mine operators to achieve compliance with the dust standards in this final rule using existing and available engineering controls and work practices. Engineering controls, unlike respirators or administrative controls, have the advantage of curbing atmospheric dust concentrations, which reasonably ensures that all miners in the area are adequately protected from overexposures. Based on MSHA's experience, respirators are not as effective as engineering controls in reducing miners' exposures to respirable coal mine dust. MSHA is aware that miners are likely to remove their respirators when the miners are performing arduous tasks, chewing tobacco, sick, hot or sweaty, or when the respirator is uncomfortable, thereby subjecting the miner to ambient dust concentrations that may not meet the standard.

Similarly, the effectiveness of administrative controls requires oversight to ensure that miners adhere to the controls, such as restrictions of time in an area or switching duties. Using administrative controls also requires that there must be a sufficient number of qualified miners available to perform the specific duties.

Moreover, as pointed out by some commenters, using engineering controls to regulate dust concentrations provides a critical collateral safety benefit because such control mechanisms, by reducing dust, also reduce the risk of coal dust-fueled explosions or fires. Rotating miners in and out of dusty atmospheres or requiring them to use respirators in dusty conditions does not ensure that coal mine dust, an explosive fuel, is suppressed in the first instance.

For these reasons, the final rule, like existing § 70.300, requires mine operators to rely on engineering or environmental dust controls to ensure that respirable dust concentrations in the atmosphere do not exceed the respirable dust standard.

Final § 72.700(b), like the proposal, provides that when required to make respirators available, the operator must provide training prior to the miner's next scheduled work shift, unless the miner received training within the previous 12 months on the types of respirators made available. It further requires that the training must include the care, fit, use, and limitations of each type of respirator.

The final training requirements are consistent with the recommendations made in the 1995 NIOSH Criteria Document. As explained in the proposal, the training requirement ensures that miners are informed about the respiratory protection options available to them. The value of all personal protective equipment, including respirators, is partially contingent on the correct use, fit, and care of the device by the wearer. Meaningful instruction to miners in how to use, care, and fit the available respirators, as well as their technical and functional limitations, encourages miners to actively participate in maximizing the potential benefits of using a respirator, especially during periods when the respirable dust levels are reported as exceeding the allowable level. In addition, retraining on the respiratory equipment is necessary when the miner has not been trained within the previous 12 months on the specific types of respirators that are made available. Retraining should reiterate the information presented during the initial training session to refresh miners' knowledge.

One commenter stated that the training should include a requirement that operators explain why respirators are necessary. This commenter stated that an explanation of the need for

respirators would motivate miners to use them. Final paragraph (b) is intended to provide a basic framework for minimum areas of instruction. Because the training required by final paragraph (b) is performance-oriented, operators can adapt the training to best meet the needs of their miners. As clarified in the proposal, operators can develop a training module that includes course content beyond the subject-matter requirements set forth in final paragraph (b), or they can choose to allot a different amount of training time to each subject matter, based on the particular skills and knowledge of the miners. Although final paragraph (b) does not explicitly provide that operators must explain why respirators may be needed, MSHA anticipates that such a basic topic will be addressed in any well-designed training curriculum.

Final paragraph (b) neither specifies a minimum required duration for the training, nor requires MSHA approval of the operator's training curriculum. Mine operators should customize training programs, and adjust them as needed, so as to best accommodate the individual circumstances at each mine.

During the public comment period, MSHA requested comment on whether the time required for respirator training should be separate from part 48 training. One commenter responded. This commenter recommended that training time should be specifically devoted for that purpose, rather than allow such training to be subsumed by part 48 training.

Like the proposal, final paragraph (b) requires that the training provided under this section be in addition to the training given to fulfill part 48 requirements. Separating the training on how to use, care, and fit the available respirators, as well as their technical and functional limitations, from the part 48 training requirements will give each of the specified areas the focused treatment that is needed for effective training.

Final § 72.700(c) includes a nonsubstantive change from the proposal. It requires that an operator keep the training record at the mine site for 24 months after completion of the training. The proposal would have required a ''2 year'' retention period. The term ''24 months'' included in final paragraph (c) is consistent with other provisions in the final rule. Final paragraph (c) further provides that an operator may keep the training record elsewhere if the record is immediately accessible from the mine site by electronic transmission. In addition, it requires that upon request from an authorized representative of the Secretary, Secretary of HHS, or representative of miners, the operator must promptly provide access to any training records. Final paragraphs (c)(1)–(3) require the record to include the date of training, the names of miners trained, and the subjects included in the training.

Final paragraphs (c)(1)–(i)(3) are new; the paragraphs were added to ensure that authorized representatives of the Secretary or Secretary of HHS, or the miners' representative can determine whether and when the training required by § 72.700(b) has been provided to miners who may use respiratory protection equipment.

During the public comment period, MSHA solicited comment on the proposed requirement that operators retain the training record for 2 years. MSHA received a few comments supporting the proposal. As with MSHA's other training record requirements, the 24-month retention requirement allows MSHA sufficient time within which to verify that the required training has been provided. In addition, because a 12-month interval can elapse before retraining becomes applicable, the 24-month record retention period is reasonable.

MSHA recognizes that it may be more efficient for some mine operators to store records at a centralized location. Given that electronic recordkeeping has become commonplace in the mining industry, final paragraph (c) allows mine operators to store the training record at locations that are remote or at a distance from the mine site, so long as they are immediately accessible by electronic transmission (e.g., fax or computer). In addition, final paragraph (c) is consistent with MSHA's other recordkeeping provisions, as well as with the Agency's statutory right to access records under Section 103(h) of the Mine Act.

3. Section 72.701 Respiratory Equipment; Gas, Dusts, Fumes or Mists

Final § 72.701 is the same as the proposal. Final § 72.701, like the proposal, is derived from existing § 70.305. It expands the scope of existing § 70.305 to include all coal mines, whether surface or underground, and includes coverage of part 90 miners. It requires that respiratory equipment approved by NIOSH under 42 CFR part 84 must be provided to persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mists. It further requires that when exposure is for prolonged periods, the operator must take other measures to protect such persons or to reduce the hazard.

Because inhalation hazards from gases, dusts, fumes, and mists can be found at surface operations too, the final rule expands the scope of coverage to include miners at both surface and underground operations. MSHA's longstanding interpretation of the term ''short periods'' means, for example, the time required to drill three or four holes for trolley hangers, to drill holes to take down a piece of loose roof, to drill shot holes in a roof fall, to make small spray applications of paint or sealing compound. MSHA considers prolonged periods to be any duration of time that does not fit the interpretation of ''short periods.''

One commenter stated that MSHA standards for respiratory protection are outdated. The commenter pointed out that, in 1998, NIOSH revised its requirements to require a cartridge change schedule to be established for air purifying respirators that are used to reduce the inhalation hazards from gas. The commenter also added that OSHA's standards address the cartridge change schedule.

In response, MSHA clarifies that the intent of the proposal was only to extend the respiratory equipment coverage to persons at surface mines, persons at surface areas of underground mines, and part 90 miners. The proposal did not intend to modify the existing technical standards concerning respiratory equipment to control miners' exposure to gas, dusts, fumes, or mists. Any revisions of that nature would be undertaken in a separate rulemaking.

4. Section 72.800 Single, Full-Shift Measurement of Respirable Coal Mine Dust

Final § 72.800 is clarified from the proposal. It provides that the Secretary will use a single, full-shift measurement of respirable coal mine dust to determine the average concentration on a shift, since that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift.

Proposed § 72.800 provided that the Secretary may use a single full-shift sample to determine compliance with the dust standard if a single sample is an accurate measurement of miners' exposure to respirable coal mine dust. The Secretary has found, in accordance with sections 101 (30 U.S.C. 811) and 202(f)(2) (30 U.S.C. 842(f)(2)) of the Mine Act, that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. Accordingly, the

1972 Joint Finding,[60] by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, on the validity of single-shift sampling is rescinded. Final § 72.800 clarifies that MSHA will make a compliance determination based on a single full-shift MSHA inspector sample.

In addition, final § 72.800 clarifies that noncompliance with the respirable dust standard or the applicable respirable dust standard when quartz is present, in accordance with subchapter O, is demonstrated when a single, full-shift measurement taken by MSHA meets or exceeds the applicable ECV in Table 70–1, 71–1, or 90–1, that corresponds to the applicable standard and the particular sampling device used. Final § 72.800 is consistent with proposed §§ 70.207(e); 70.208(d); 70.209(c); 71.207(i); 90.208(c); and 90.209(c). Those proposed provisions provided that no single full-shift sample meet or exceed the ECV that corresponds to the applicable dust standard in Tables 70–1, 71–1, and 90–1, and would have applied to both operator and MSHA inspector samples. However, as explained elsewhere in this preamble under final § 70.208(e), under the final rule, a noncompliance determination based on a single full-shift sample only applies to MSHA inspector samples and not operator samples. Accordingly, the single full-shift sampling provision is included in final § 72.800 and not in parts 70, 71, and 90.

Likewise, final § 72.800 clarifies that upon issuance of a citation for a violation of the standard, and for MSHA to terminate the citation, the operator must take the specified actions in subchapter O, as applicable. Final § 72.800 is consistent with the actions specified in proposed §§ 70.207(g) and (h); 70.208(f); 70.209(e) and (f); 71.207(k) and (l); and 90.209(e). Those proposed provisions would have applied to both operator and MSHA inspector single full-shift samples. Under final § 72.800, a noncompliance determination on a single full-shift sample is only based on an MSHA inspector's single full-shift sample and not an operator's single full-shift sample. Noncompliance based on an operator's samples consists of either 2 or 3 operator samples (depending on where the sample is taken) or the average of all operator samples, but not both. Accordingly, the specified actions are included in final § 72.800. These actions are consistent with final §§ 70.206(h) and (i); 70.207(g) and (h); 70.208(h) and (i); 70.209(f) and (g); 71.206(k) and (l); and 90.207(f), which apply when a citation is issued based on an operator's samples.

Several commenters stated that, in accordance with § 202(f) of the Mine Act, MSHA is required to conduct congressionally-mandated joint rulemaking with NIOSH to support a finding that single full-shift samples provide accurate results and that MSHA cannot unilaterally rescind the 1972 Joint Finding. Nothing in Section 202(f) of the Mine Act requires a joint rulemaking with NIOSH either to rescind the 1972 Joint Finding by MSHA and HHS or to promulgate the single sample provision. Section 202(f) of the Mine Act states verbatim from § 202(f) of the Coal Act. It states that the term ''average concentration'' means a determination that accurately represents the atmospheric conditions regarding the respirable coal mine dust to which each miner in the active workings is exposed as measured over a single shift only, unless the Secretary and the Secretary of Health and Human Services find, in accordance with section 101 of the Mine Act, that such single shift measurement will not accurately represent such atmospheric conditions during such shift.

On July 17, 1971, MSHA's predecessor, the Department of the Interior, Mining Enforcement and Safety Administration, together with the Secretary of Health, Education, and Welfare, issued a proposed ''Notice of Finding That Single Shift Measurements of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift'' (36 FR 13286). The proposed notice stated that pursuant to Section 101 of the Federal Coal Mine Health and Safety Act of 1969, the Secretaries were planning to jointly issue a finding ''that single shift measurement of respirable dust will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed.'' On February 23, 1972, the Agencies issued the Notice of Finding That a Single Shift Measurement of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift (37 FR 3833) (1972 Joint Finding).

The 1972 Joint Finding is based on Section 202(f) of the Mine Act. Section 201(a) of the Mine Act states that sections 202 through 206 are interim standards. Therefore, the 1972 Joint Finding is an interim mandatory health standard. *See National Mining Association* v. *Secretary of Labor,* 153 F.3d 1264, 1267–68 (11th Cir. 1998).

Section 201(a) of the Mine Act gives the Secretary the authority to supersede interim mandatory health standards of the Mine Act with ''improved mandatory health and safety standards.'' In doing so, Section 201(a) states that the Secretary must enact the new standards according to the provisions of Section 101 of the Mine Act. Id. at 1268. Section 101(a)(6) authorizes the Secretary, alone, to promulgate mandatory health standards. The use of a single, full-shift measurement of respirable coal mine dust to determine average concentration on a shift is an improved mandatory health standard promulgated by MSHA under section 101 of the Mine Act. One commenter acknowledged that, in accordance with Section 201(a) of the Mine Act, an ''interim mandatory health standard under the Mine Act can be revised under the rulemaking provisions of the Mine Act § 101.'' In accordance with § 201(a), the 1972 Joint Finding is superseded by final § 72.800—an improved mandatory health standard.

In addition, final § 72.800 is consistent with the 1998 Final Joint Finding, issued by both MSHA and NIOSH, which concluded that the 1972 Joint Finding was incorrect and that the average respirable dust concentration to which a miner is exposed can be accurately measured over a single shift (63 FR 5664). Final § 72.800 is also consistent with the 1995 Criteria Document which recommends the use of single, full-shift samples to compare miners' exposures to the recommended exposure limit (REL).

Several commenters stated that they supported the use of single, full-shift samples to make noncompliance determinations. Others questioned the accuracy of single, full-shift samples, stating a preference for MSHA's existing five-sample average approach.

Final § 72.800 allows MSHA to base determinations of noncompliance on the results of single, full-shift samples collected by the Agency. It is based on MSHA's experience, review of section 202(f) of the Mine Act, significant improvements in sampling technology, updated data, and comments and testimony on previous notices and proposals addressing the accuracy of single, full-shift measurements meeting the NIOSH Accuracy Criterion. In addition, this finding is consistent with recommendations contained in both the 1995 NIOSH Criteria Document and the 1996 Dust Advisory Committee Report. In the Criteria Document, NIOSH recommended the use of single, full-shift samples to compare worker exposures with its REL and concluded that this action is consistent with

[60] See footnote 2 of this preamble.

Section 202(f) of the Act. The Dust Advisory Committee recommended that MSHA change its compliance sampling program to allow the use of single full-shift samples for determining compliance; seven of nine Committee members affirmed this recommendation.

Section 202(f) of the Mine Act does not define the term ''accurately represent.'' Therefore, MSHA applied the accuracy criterion developed and adopted by NIOSH (Kennedy et al., 1995) in judging whether a single, full-shift measurement will accurately represent the full-shift atmospheric dust concentration on the particular shift sampled. For a single, full-shift concentration to be considered an accurate measurement, the NIOSH Accuracy Criterion requires that such measurement come within 25 percent of the corresponding true dust concentration at least 95 percent of the time (Kennedy et al., 1995). It covers both precision and uncorrectable bias. Because a single, full-shift sample measures the average respirable coal mine dust on a specific shift at the sampling location, environmental variability beyond what occurs at the sampling location on the specific shift sampled is not relevant to assessing measurement accuracy.

Since first published in 1977 (Taylor et al., 1977), the NIOSH Accuracy Criterion has been used by NIOSH and others in the occupational health professions to validate sampling and analytical methods. It was devised as a goal for the development and acceptance of sampling and analytical methods capable of generating reliable exposure data for contaminants at or near the OSHA permissible exposure limits.

MSHA recognizes that all measurements of atmospheric conditions are susceptible to some degree of measurement error. Although the Mine Act requires that each measurement ''accurately represent'' the concentration of respirable dust, the Act neither defines ''accurately represent'' nor provides limits on the degree of potential error to be tolerated. The NIOSH Accuracy Criterion is relevant and widely recognized and accepted in the occupational health professions as providing acceptable limits for industrial hygiene measurements. MSHA considers a single, full-shift measurement of respirable coal mine dust to ''accurately represent'' atmospheric conditions at the sampling location, if the sampling and analytical method used meet the NIOSH Accuracy Criterion.

Although the NIOSH Accuracy Criterion does not require field testing to determine method accuracy, it recognizes that field testing does provide a further test of the method. However, in order to avoid confusing real differences in dust concentration with measurement errors when testing is done in the field, precautions may have to be taken to ensure that all samplers are exposed to the same concentrations (Kennedy et al., 1995). To determine, so far as possible, the accuracy of its sampling and analytical method under mining conditions, MSHA conducted 22 field tests in an underground coal mine. To provide a valid basis for assessing accuracy, 16 CMDPSUs were exposed to the same dust concentration during each field test using a specially designed portable chamber. The data from these field experiments were used by NIOSH in its direct approach to determining whether MSHA's method meets the long-established NIOSH Accuracy Criterion (Kogut et al., 1997).

The criterion requires that, with high confidence, measurements must consistently fall within a specified percentage of the true concentration being measured. Measurements that were repeatable but significantly biased, so that they systematically missed the mark by a wide margin, would not meet the Accuracy Criterion. Therefore, fulfilling the NIOSH Accuracy Criterion depends not only on measurement precision, but also on measurement bias if any such bias exists. Precision refers to consistency or repeatability of results, while bias refers to a systematic error that is present in every measurement.

Since the amount of dust present on a filter capsule in a CMDPSU used by an MSHA inspector is measured by subtracting the pre-exposure weight from the post-exposure weight, any bias present in both weight measurements is mathematically canceled out by subtraction. Furthermore, as will be discussed later, a control (i.e., unexposed) filter capsule has been and will continue to be pre- and post-weighed along with the exposed filter capsule. The weight gain of the exposed capsule will be adjusted by the weight gain or loss of the control filter capsule. Therefore, any bias that may be associated with differences in pre- and post-exposure laboratory conditions or with changes introduced during storage and handling of the filter capsules used with the CMDPSU will also be mathematically canceled out. The use of control filters is unnecessary when sampling with the approved CPDM due to the unit's design. Unlike the CMDPSU, which is a dust sampling pump capable of only collecting respirable dust particles from the mine air that must be weighed later in the laboratory, the CPDM is a complete sampling system that does the sample collection and pre- and post-weighing of the collection filter on the same day. As a result, there is no need to address the potential bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the collection filter. Therefore, MSHA concludes that the improved sampling and analytical method is statistically unbiased. This means that such measurements contain no systematic error. In addition, if any systematic error existed, it would be present in all measurements, and so, measurement bias would not be reduced by making multiple measurements.

For unbiased sampling and analytical methods, a standard statistic—called the Coefficient of Variation (CV)—is used to determine if the method meets the NIOSH Accuracy Criterion. The CV, which is expressed as either a fraction (e.g., 0.05) or a percentage (e.g., 5 percent), quantifies measurement accuracy for an unbiased method. An unbiased method meets the NIOSH Accuracy Criterion if the true CV is no more than 0.128 (12.8 percent). However, since it is not possible to determine the true CV with 100-percent confidence, the NIOSH Accuracy Criterion contains the additional requirement that there be 95-percent confidence that measurements will come within 25 percent of the true concentration 95 percent of the time. Stated in mathematically equivalent terms, an unbiased method meets the NIOSH Accuracy Criterion if there is 95-percent confidence that the true CV is less than or equal to 0.128 (12.8 percent).

OSHA has frequently employed a version of the NIOSH Accuracy Criterion when issuing new or revised single substance standards. For example, OSHA's benzene standard provides: ''[m]onitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene'' (29 CFR 1910.1028). Similar wording can be found in the OSHA standards for vinyl chloride (29 CFR 1910.1017); arsenic (29 CFR 1910.1018); lead (29 CFR 1910.1025); 1, 2-dibromo-3-chloropropane (29 CFR 1910.1044); acrylonitrile (29 CFR 1910.1045); ethylene oxide (29 CFR 1910.1047); and formaldehyde (29 CFR 1910.1048). For vinyl chloride and acrylonitrile, the margin of error permitted for the method is ± 35 percent at 95 percent confidence at the permissible exposure limit.

When measuring exposures for enforcement purposes, OSHA uses, when possible, methods that meet the NIOSH Accuracy Criterion. However, measurement techniques meeting the NIOSH Accuracy Criterion are not available for some substances. In either case, the CV determined for the method is used in a test procedure to determine noncompliance, with at least 95-percent confidence. The noncompliance test procedure was described in the 1977 NIOSH Occupational Exposure Sampling Strategies Manual. The OSHA inspector should use the sampling and analytical method CV to determine compliance on a single shift (Leidel et al., U.S. Department of Health, Education, and Welfare, NIOSH Publication No. 77–173, 1977). The procedure NIOSH described is mathematically identical to that used, both then and now, by OSHA compliance officers.

Some commenters stated that averaging should continue to be used because coal mine dust exposure is related to chronic health effects that occur over a lifetime and not as a result of single shift's overexposure. Other commenters stated that a single, full-shift measurement cannot accurately estimate a miner's exposure on a normal workday because a single sample with high or low weight gains may be an aberration due to dust suspended in the atmosphere or changing conditions in the mine such as the height and slope of the seam.

Section 202(b) of the Mine Act (30 U.S.C. 842(b)), explicitly requires that the average dust concentration be continuously maintained at or below the applicable standard on each shift. Overexposures above the standard may occur even when the average is below the standard. In the context of MSHA's single sample finding, the ''atmospheric conditions'' means the fluctuating concentration of respirable coal mine dust during a single shift. These are the atmospheric conditions to which a miner at the sampling location may be exposed. Therefore, MSHA's single-sample determination pertains only to the accuracy in representing the average of the fluctuating dust concentration over a single shift.

Some commenters stated that the average dust concentration over a full shift is not identical at every point within a miner's work area due to humidity, weather outside, or occasional geological phenomenon. Section 202(a) of the Mine Act gives the Secretary the discretion to determine the area to be represented by respirable dust sampling collected over a single shift. Although dust concentrations in the mine environment can vary from location to location, even within a small area near a miner, the Mine Act does not specify the area that the measurement is supposed to represent, and the sampler unit may therefore be placed in any location, reasonably calculated to determine excessive exposure to respirable dust. Because the Secretary intends to prevent excessive exposures by limiting dust concentrations in the active workings as intended by the Mine Act, it is sufficient that each measurement accurately represent the respirable dust concentration at the corresponding sampling location only. Limiting the dust concentration ensures that no miner in the active workings will be exposed to excessive concentrations of respirable coal mine dust. Moreover, MSHA does not intend to use a single, full-shift measurement to estimate any miner's exposure (personal) because no sampling device can exactly duplicate the particle inhalation and deposition characteristics of a miner at any work rate (these characteristics change with work rate), let alone at the various work rates occurring over the course of a shift. Limiting the respirable dust concentration to which each miner is exposed in the active workings (area sampling) ensures that the respirable dust concentration inhaled by any miner is limited.

Some commenters supported the use of single, full-shift samples because it eliminates an important source of sampling bias due to averaging.

Final § 72.800 provides for single, full-shift sampling by MSHA because the single, full-shift samples may be above the standard even when multiple shift averages are below the standard. For example, five samples of: 3.4, 2.7, 2.6, 0.7, and 0.5 would result in an average of 1.98 mg/m^3, which meets the 2.0 mg/m^3 standard, although 3 single samples exceed the standard.

Moreover, averaging multiple samples is not likely to produce results that are more accurate than the results of a single sample. MSHA intends to apply a single sample measurement taken during a shift, and is not extrapolating those results to other past shifts. A detailed description of the issue involving sampling bias due to averaging is provided in Appendix A of the 2000 single sample proposed rule (65 FR 42108). Available at *http://www.msha.gov/REGS/FEDREG/PROPOSED/2000PROP/00-14075.PDF*].

Although averaging is one of the two methods of determining noncompliance with the respirable coal dust standard pertaining to operator sampling, in the final rule, MSHA changed the existing averaging method so that there is no longer an averaging process where miners are exposed to high levels of respirable coal mine dust and no action is taken to lower dust levels. Under the existing standards, corrective action is required only after the average of five operator samples exceeds the respirable coal mine dust standard and a citation is issued. This permits specific instances of miners' overexposures without requiring any corrective action by the operator to reduce concentrations to meet the standard. The final rule requires immediate corrective actions to lower dust concentrations when a single, full-shift operator sample meets or exceeds the excessive concentration value for the applicable dust standard. These corrective actions will result in reduced respirable dust concentrations in the mine atmosphere and, therefore, will provide better protection of miners from further high exposures.

Of the commenters who questioned the accuracy of single full-shift sampling, some stated that dust sample results from the existing and proposed sampler are only estimates of actual dust exposures and those estimates of exposures are dependent on the performance of the sampler, the impact of the conditions under which the sample is collected, and the accuracy of the analysis and weighing of the collected sample. Therefore, they stated that averaging produces a more accurate representation of the dust to which a miner is exposed, and that making health risk and protection decisions on less accurate data provides less protection than making decisions on more accurate data.

Due to advances in sampling technology, MSHA has safeguards in place to ensure that a single sample taken with an approved CMDPSU will accurately measure coal mine dust concentrations during a shift. To eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of filter capsules, MSHA is using new stainless steel backed filter cassettes which demonstrate better weighing stability to minimize pre-and post-weighing variability. In addition, both MSHA and the manufacturer of the filter cassette are using semi-micro balances with improved weighing procedures. Finally, the new generation of sampling pumps currently in use, which incorporates the latest technology in pump design to provide more constant flow throughout the sampling period, increases the accuracy of MSHA-collected dust samples. The validity of the sampling and analytical process is

an important aspect of obtaining accurate measurements. Since passage of the Coal Act, there has been an ongoing effort by MSHA and NIOSH to improve the accuracy and reliability of the entire sampling process. In 1980, MSHA issued regulations revising sampling, maintenance and calibration procedures in 30 CFR parts 70, 71, and 90. These revisions were designed to minimize human and mechanical errors and ensure that samples collected with the approved CMDPSU accurately represent the full-shift, average atmospheric dust concentration at the location of the sampler unit. These provisions require: (1) Certification of the competence of all individuals involved in the sampling process and in maintaining the sampling equipment; (2) calibration of each sampler unit at least every 200 hours; (3) examination, testing, and maintenance of units before each sampling shift to ensure that the units are in proper working order; and (4) checking of sampler units during and at the end of sampling to ensure that they are operating properly and at the proper flow rate. In addition, significant changes, including robotic weighing and the use of electronic balances, were made in 1984, 1994, and 1995. These changes improved the reliability of sample weighings at MSHA's Respirable Dust Processing Laboratory and are discussed below.

In addition, in 2010, MSHA published revised requirements that it and NIOSH use to approve sampling devices that monitor miner exposure to respirable coal mine dust (75 FR 17512, April 6, 2010). The final rule updated approval requirements for the existing CMDPSU to reflect improvements in this sampler over the past 15 years. The final rule also established criteria for approval of the new CPDM.

All of these efforts have improved the accuracy and reliability of the sampling process since the time of the 1971 proposed and the 1972 final Joint Findings. A discussion follows on each of the three phases of the sampling process involving the use of the approved CMDPSU: sampler unit performance, collection procedures, and sample processing. In addition, the accuracy of measurements taken with an approved CPDM is discussed in Section III.C., Feasibility in this preamble, and in greater detail by Volkwein, et al., in two NIOSH Reports of Investigations (RI 9663, 2004; and RI 9669, 2006).

In accordance with the provisions of section 202(e) of the Mine Act (30 U.S.C. 842(e)), both MSHA and NIOSH administer a comprehensive certification process under 30 CFR part 74 to approve dust sampler units for use in coal mines. To be approved for use, a sampler unit must be intrinsically safe, which is determined by MSHA. A sampler unit must also meet stringent technical and performance requirements established by NIOSH that govern the quantity of respirable dust collected and flow rate consistency over the full shift or up to 12 hours when operated at the prescribed flow rate. As necessary, NIOSH also conducts performance audits of approved sampler units purchased on the open market to determine if the units are being manufactured in accordance with the specifications upon which the approval was issued. The system of technical and quality assurance checks currently in place is designed to prevent a defective sampler unit from being manufactured and made commercially available to the mining industry or to MSHA. In the event that these checks identify a potential problem with the manufacturing process, established procedures require immediate action to correct the problem.

In 1992, NIOSH approved the use of new tamper-resistant filter cassettes with features that enhanced the integrity of the sample collected when using the CMDPSU. A backflush valve was incorporated into the outlet of the cassette, preventing reverse airflow through the filter cassette, and an internal flow diverter was added to the filter capsule, reducing the possibility of dust dislodged from the filter surface from falling out of the capsule inlet.

In 1999, based on MSHA studies (Kogut et al., 1999) involving the weighing stability of the CMDPSU filter design, and in an effort to standardize the manufacturing process, the filter cassette manufacturer submitted for NIOSH approval a modification to the design. The modification involved replacing the Tyvek® support pad with a stainless steel wheel, similar to the one located on the inlet side of the collection filter. On October 18, 2000, NIOSH approved the filter cassettes with stainless steel backup pads to be used to collect respirable coal mine dust exposure measurements. OSHA also began using filter cassettes with stainless steel backup pads to determine exposures for various particulates.

In 1995, MSHA replaced all pumps in use by inspectors with new constant-flow pumps that incorporated the latest technology in pump design. These pumps provide more consistent flow throughout the sampling period. Nevertheless, MSHA recognizes that as these pumps age, deterioration of the performance of older pumps could become a concern. However, there is no evidence that the age of the equipment affects its operational performance if the equipment is maintained as prescribed by 30 CFR parts 70, 71, and 90. Therefore, in addition to using these pumps, inspection procedures require MSHA inspectors to make a minimum of two flow rate checks during a sampling shift to ensure that the sampler unit is operating properly.

A sample is voided if the proper flow rate was not maintained during the final check at the conclusion of the sampling shift. In fiscal year 2011, only 118 samples, or approximately 0.2 percent, of the 54,809 inspector samples processed were voided because the sampling pump either failed to operate throughout the entire sampling period or failed to maintain the proper flow rate during the final check. Units found not meeting the requirements of part 74 are immediately repaired, adjusted, or removed from service.

The potential effect of vibration on the accuracy of a respirable dust measurement was recognized by NIOSH in 1981. An investigation, supported by NIOSH, was conducted by the Los Alamos National Laboratory which found that vibration has an insignificant effect on sampler performance (Gray and Tillery, 1981).

MSHA regulations at 30 CFR parts 70, 71, and 90 prescribe the manner in which mine operators are to take respirable dust samples. The collection procedures are designed to ensure that the samples accurately represent the amount of respirable dust in the mine atmosphere to which miners are exposed on the shift sampled. MSHA considers samples taken with an approved sampler in accordance with these procedures to be valid.

Some commenters stated that a single, full-shift measurement cannot accurately estimate a miner's exposure on a normal workday due to a miner's behavior such as dropping the sampling unit on a machine or the mine floor, brushing off dust from work clothes, or briefly taking the unit off. These commenters stated that averaging multiple samples would provide leeway by reducing the impact of an aberrant sample.

In response to commenters' concerns, the Agency notes that MSHA inspectors are normally in the general vicinity of the sampling location, and therefore have knowledge of the specific conditions under which samples are taken. In addition, MSHA inspectors are instructed to ask miners wearing the sampler units whether anything that could have affected the validity of the sample occurred during the shift. If so, the inspector will note this on the data

card and request that the sample be examined to determine its validity.

In addition, when sampling with the CMDPSU, MSHA inspectors use unexposed control filters to eliminate any bias that may be associated with changes in laboratory conditions or changes introduced during storage and handling of the filter capsules. A control filter is an unexposed filter that was pre-weighed on the same day and in the same laboratory as the filter used for sampling. This control filter is used to adjust the weight gain obtained on each exposed filter. Any change in weight of the control filter capsule is subtracted from the change in weight of each exposed filter capsule. MSHA began using control filters on May 7, 1998, and has continued this practice. The control filter cassette, which is carried by the inspector in a shirt or coverall pocket during the sampling inspection, is plugged to prevent exposure to the mine environment.

Processing samples collected with the CMDPSU consists of weighing the exposed and control (unexposed) filter capsules, recording the weight changes, and examining certain samples in order to verify their validity. Sample processing also includes electronic transmission of the results to the MSHA Standardized Information System (MSIS) center where dust concentrations are computed. The results are then transmitted to MSHA enforcement personnel and to mine operators.

The procedures and analytical equipment, as well as the facility used by MSHA to process respirable coal mine dust samples have been continuously improved since 1970 to maintain a state-of-the-art laboratory. From 1970 to 1984, samples were manually weighed using semi-microbalances. MSHA automated this process in 1984 with the installation of a state-of-the-art robotic system and electronic balances, which increased the precision of sample-weight determinations. MSHA improved the weighing precision in 1994, when both the robotic system and balances were upgraded. Also, beginning in early 1998, all respirable coal mine dust samples were processed in a new, specially designed clean room facility that maintains the temperature and humidity of the environment. Currently, the temperature and humidity are maintained at 21.0 °C ± 2.0 °C and 50% ± 10%, respectively. Using a modified HEPA filtration system, the environment is maintained at a clean room classification of 1000 (near optimum for clean room cleanliness).

In mid-1995, MSHA implemented two modifications to its procedures for processing inspector samples. One involved pre- and post-weighing filter capsules to the nearest microgram (µg) (0.001 mg) within MSHA's laboratory. Prior to mid-1995, capsules had been weighed in the manufacturer's laboratory before sampling, and then in MSHA's laboratory after sampling. To maintain the integrity of the weighing process, 8% of all filter capsules are systematically weighed a second time. If a significant deviation is found, the balance is recalibrated and all capsules with questionable weights are reweighed.

The other modification was to discontinue the practice of truncating (to 0.1 mg) the recorded weights used in calculating dust concentrations. MSHA now uses all significant digits associated with the weighing capability of the balance (0.001 mg) when processing samples. Both modifications improved the overall accuracy of the measurement process.

To eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filters, MSHA is using control filters in its enforcement program. Any change in the weight of the control filter is subtracted from the measured change in weight of the exposed filter.[61]

Since MSHA began pre- and post-weighing filter capsules to the nearest µg, coal mine operators have asked to use filter capsules pre-weighed to a µg to collect optional samples that they submit to MSHA for quartz analysis. The use of these pre-weighed filter capsules may eliminate the need to sample multiple shifts in order to obtain sufficient dust mass on the collection filter for quartz analysis. Currently, filter capsules used by coal mine operators to sample in accordance with 30 CFR parts 70, 71, and 90 are pre-weighed by the manufacturer to the nearest µg. However, for samples taken with filters pre-weighed to the nearest µg, only those with a net weight gain of at least 450 µg, contain sufficient dust mass to permit the percentage of quartz to be determined. In 1996, the manufacturer upgraded its equipment used to pre-weigh filter capsules and now uses the same type of balance as MSHA's Respirable Dust Processing Laboratory. This permits weight gain measurements to be made to the nearest µg.

[61] If a control filter either shows a weight gain greater than 60 micrograms or a weight loss greater than 30 micrograms, the control filter is invalid and the associated concentration measurements are not used for enforcement purposes.

The procedure requiring inspector samples to be pre- and post-weighed in the same laboratory was developed prior to adopting control filters and was based on the assumption that no control filters were being used. Since use of the control filters adjusts for differences that may exist in laboratory conditions on the days of pre- and post-weighing, it is no longer necessary to pre- and post-weigh the filters in the same laboratory. Currently, all filter cassettes being manufactured for use with the approved CMDPSU are pre-weighed by the manufacturer and post-weighed by MSHA.

To determine the viability of using exposed filters pre-weighed by the manufacturer and post-weighed by MSHA in establishing the percentage of quartz, MSHA conducted a study to quantify weighing variability between the manufacturer and MSHA laboratories (Parobeck et al., 1997). Based on this study, the overall imprecision of an interlaboratory weight-gain measurement was estimated to be 11.5 µg for capsules with a stainless steel filter support pad. This estimate closely matches the 11.6 µg result reported for capsules with stainless steel support pads in another study (Kogut et al., 1999). In the latter study, unexposed capsules were pre-weighed by MSHA, assembled into cassettes by the manufacturer, sent out to the field and carried during an inspection, and then post-weighed by MSHA.

Using the higher estimate from the two studies, NIOSH reevaluated the accuracy of MSHA's improved sampling and analytical method using the CMDPSU, which incorporates a control filter adjustment and the redesigned filter capsule. NIOSH concluded that the control filter adjustment will correct for any potential biases due to differences in laboratory conditions, so that it is no longer necessary to pre- and post-weigh filter capsules in the same laboratory (Grayson, 1999a, 1999b). Therefore, in accordance with NIOSH, MSHA revised the processing procedures for inspector samples from pre- and post-weighing samples (filter capsules) in the same laboratory (with adjustment by a control filter) to pre- and post-weighing of samples to the nearest µg in different laboratories (with continued adjustment by a control filter).

To ensure the precision and accuracy of the pre-weight of filters used by inspectors, MSHA instituted a quality assurance program to monitor the daily production of filters weighed to the nearest µg by the manufacturer. This program conformed to MIL–STD–105D,

which was replaced by ANSI/ASQ Z1.4. The most recent version is ANSI/ASQ Z1.4–2008, which defines the criteria currently used to monitor the quality of pre-weighed filters used in MSHA's operator sampling program.

One commenter stated that a new CPDM filter is used to collect respirable coal mine dust without current lab procedures that analyze blank filters to prevent known filter contamination and variability from creating false weight readings. As was discussed earlier, because of the CPDM's unique built-in weighing system, there is no need for a blank or control filter. The CPDM, unlike the CMDPSU which is primarily a sampling pump, incorporates a complete sampling and sophisticated weighing system that is designed to pre-weigh the collection filter, collect a dust sample, and then post-weigh the filter to determine the weight of respirable dust collected on the filter on the same day. This eliminates the need to address the potential bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the collection filter. More importantly, the CPDM is designed to self-zero itself at the end of the warm-up period so that any mass that may have been deposited on the filter prior to sampling is not recorded.

All respirable dust samples collected using a CMDPSU and submitted are considered valid unless the dust deposition pattern on the collection filter appears to be abnormal or other special circumstances are noted that would cause MSHA to examine the sample further. Standard laboratory procedures, involving visual and microscopic examination as necessary, are used to verify the validity of samples. Samples with a weight gain of 1.4 milligrams (mg) or more are examined visually for abnormalities such as the presence of large dust particles (which can occur from agglomeration of smaller particles), abnormal discoloration, abnormal dust deposition pattern on the filter, or any apparent contamination by materials other than respirable coal mine dust. Also, samples weighing 0.1 mg or less are examined for insufficient dust particle count. Similar checks are also performed in direct response to specific inspector or operator concerns noted on the dust data card to which each sample is attached.

Regarding the presence of large dust particles, some greater than 10 microns (μm) can be inhaled and reach the alveoli of the lungs (Lippman and Albert, 1969). According to the British National Coal Board, particles as large as 20 μm diameter may be deposited on the lungs although most lie in the range below 10 μm diameter (Goddard et al., 1973). Furthermore, due to the irregular shapes of dust particles, the respirable dust collected by the MRE instrument (the dust sampler used by the British Medical Research Establishment in the epidemiological studies on which the U.S. respirable coal mine dust standard was based) may include some dust particles as large as 20 μm (Goddard et al., 1973). Moreover, MSHA studies have shown that nearly all samples taken with approved CMDPSUs contain some oversized particles (Tomb, 1981).

There are occasions, however, when oversized particles may be considered a contaminant. For example, an excessive number of such particles could enter the filter capsule if the sampling head assembly is accidentally or deliberately ''dumped'' (turned upside down) possibly causing some of the contents of the cyclone grit pot to be deposited on the collection filter. When MSHA has reason to believe that contamination has occurred, the suspect sample is examined to verify its validity.

In addition, MSHA's laboratory procedures require any sample exhibiting an excessive weight gain (over 6 mg) or showing evidence of being ''dumped'' to be examined microscopically for the presence of an excessive number of oversized particles (U.S. Department of Labor, MSHA Method P–19, 2012). Samples identified by an inspector or mine operator as possibly contaminated are also examined. If this examination indicates that the sample contains an excessive number of oversized particles according to MSHA's established criteria, then that sample is considered to be invalid, and is voided and not used. In fiscal year 2011, only 26 of the 54,809 inspector and 42 of the 46,846 operator samples processed were found to contain an excessive number of oversize particles and thus were voided.

While rough handling of the CMDPSU or an accidental mishap could conceivably cause a sample with a weight gain less than 6 mg to become contaminated, short-term accidental inclinations of the cyclone will not affect respirable mass measurements made with CMDPSU (Treaftis and Tomb, 1974). CMDPSUs are built to withstand the rigors of the mine environment, and are therefore less susceptible to contamination than suggested by some commenters. In any event, the validity checks discussed above that are currently in place will detect contaminated samples.

With regard to the CPDM collecting respirable dust and not oversized, non-respirable dust particles, NIOSH found, through microscopic examination of previously exposed CPDM filters, no oversize particle contamination resulting from the use and cleaning of the device after 200 hours of operation (Volkwein JC, 2008).

One commenter who questioned the accuracy of a single sample in assessing miners' long term exposure stated that mine dust concentrations show great variability and that the greater the variability, the smaller the probability that a single day's sample will accurately describe the average exposure of a miner.

In response to the commenter, MSHA notes that overall variability in measurements collected on different shifts and sampling locations comes from two sources: (1) Environmental variability in the true dust concentration and (2) errors in measuring the dust concentration in a specific environment. Variability in the dust concentration is under the control of the mine operator and does not depend on the degree to which the dust concentration can be accurately measured. Measurement uncertainty, on the other hand, stems from the differing measurement results that could arise, at a given sampling location on a given shift, because of potential sampling and analytical errors. Therefore, unlike variability in dust concentration, measurement uncertainty depends directly on the accuracy of the measurement system. Measurement errors generally contribute only a small portion of the overall variability observed in datasets consisting of dust concentration measurements.

Because the measurement objective is to accurately represent the average dust concentration at the sampling location over a single shift, dust concentration variability between shifts or locations does not contribute to measurement uncertainty. Therefore, sources of dust concentration variability are not considered in determining whether a measurement is accurate. The only sources of variability relevant to establishing accuracy of a single, full-shift measurement are those related to sampling and analytical error.

As discussed above, filter capsules are weighed prior to sampling. After a single, full-shift sample is collected, the filter capsule is weighed a second time, and the weight gain (g) is obtained by subtracting the pre-exposure weight from the post-exposure weight, which will then be adjusted for the weight gain or loss observed in the control filter capsule. A measurement (x) of the atmospheric condition sampled is then calculated by Equation 1:

$$x = \frac{1.38 \bullet g}{v} \qquad \text{(Equation 1)}$$

Where:

x is the single, full-shift dust concentration measurement (mg/m^3);

1.38 is a constant MRE-equivalent conversion factor;

g is the observed weight gain (mg) after adjustment for the control filter capsule; and

v is the estimated total volume of air pumped through the filter during a typical full shift.

Random variability, inherent in any measurement process, may cause *x* to deviate either above or below the true dust concentration. The difference between *x* and the true dust concentration is the measurement error, which may be either positive or negative. Measurement uncertainty arises from a combination of potential errors in the process of collecting a sample and potential errors in the process of analyzing the sample. These potential errors introduce a degree of uncertainty when *x* is used to represent the true dust concentration.

The statistical measure used to quantify uncertainty in a single, full-shift measurement is the total sampling and analytical coefficient of variation, or CV_{total}. The CV_{total} quantifies the magnitude of probable sampling and analytical errors and is expressed as either a fraction (e.g., 0.05) or as a percent (e.g., 5 percent) of the true concentration. For example, if a single, full-shift measurement (*x*) is collected in a mine atmosphere with true dust concentration equal to 1.5 mg/m^3, and the standard deviation of potential sampling and analytical errors associated with *x* is equal to 0.075 mg/m^3, the uncertainty associated with *x* would be expressed by the ratio of the standard deviation to the true dust concentration:

CV_{total} = 0.075/1.5 = 0.05, or 5 percent.

There are three sources of uncertainty in a single, full-shift measurement, which together make up CV_{total}: (1) Variability attributed to weighing errors or handling associated with exposed and control filters capsules, CV_{weight}; (2) variability in the total volume of air pumped through the filter capsule, CV_{pump}; and (3) variability in the fraction of dust trapped on the filter, $CV_{sampler}$.

CV_{weight} covers any variability in the process of weighing the exposed or control filter capsules prior to sampling (pre-weighing), assembling the exposed and control filter cassettes, transporting the filter cassettes to and from the mine, and weighing the exposed and control filter capsules after sampling (post-weighing).

CV_{pump} covers variability associated with calibration of the pump rotameter,[62] variability in adjustment of the flow rate at the beginning of the shift, and variation in the flow rate during sampling. It should be noted that variation in flow rate during sampling was identified as a separate component of variability in MSHA's February 18, 1994, notice (59 FR 8356). Here, it is included in CV_{pump}.

$CV_{sampler}$, the variability in the fraction of dust trapped on the filter, is attributable to physical differences among cyclones.

These three components of measurement uncertainty can be combined to form an indirect estimate of CV_{total} by means of the standard propagation of errors formula:

$$CV_{total} = \sqrt{CV_{weight}^2 + CV_{pump}^2 + CV_{sampler}^2}$$

These three components are discussed in greater detail, along with responses to specific previous comments, in Appendix B to the July 7, 2000 proposed rule, *http://www.msha.gov/REGS/FEDREG/PROPOSED/2000PROP/00-14075.PDF*

Exposure variability due to job, location, shift, production level, effectiveness of engineering controls, and work practices will be different from mine to mine. This type of variability is unrelated to measurement accuracy and depends on factors under the control of the mine operator. The sampler unit is not intended to account for these factors.

In addition, CV_{total} does not account for spatial variability, or the differences in concentration related to location. Dust concentrations vary between locations in a coal mine, even within a relatively small area. However, real variations in concentration between locations, while sometimes substantial, do not contribute to measurement error. The measurement objective is to accurately measure average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift. What is being measured is the average respirable coal mine dust concentration on a specific shift at the sampling location. For example, there may be variation in measurements collected simultaneously on opposite shoulders of miners due to a combination of measurement imprecision and real, differences in the average concentration over the full shift. But these shoulder-to-shoulder differences in average full-shift concentration result from how miners orient themselves in the confines of the mining environment, with respect to the sources of dust and the direction of the air stream. These differences have no bearing on the accuracy of the average, full-shift concentration as measured on a particular shoulder.

Regarding the differences or variations in dust concentrations that occur shift to shift, the measurement objective is to measure average atmospheric conditions on the specific shift sampled. This is consistent with the Mine Act, which requires that concentrations of respirable mine dust be maintained at or below the standard during each shift.

One commenter questioned the value MSHA is using to represent variability in initially setting the pump flow rate. MSHA conducted a study to verify the magnitude of this variability component. This study simulated flow rate adjustment under realistic operating conditions by including a number of persons checking and adjusting initial flow rate under various working situations (Tomb, September 1, 1994). Results showed the coefficient of

[62] The rotameter consists of a weight or ''float'' that is free to move up and down within a vertical tapered tube which is larger at the top than the bottom. Air being drawn through the filter cassette passes through the rotameter, suspending the ''float'' within the tube. The pump is ''calibrated'' by drawing air through a calibration device (usually what is known as a bubble meter) at the desired flow rate and marking the position of the float on the tube. The processes of marking the position on the tube (laboratory calibration) and adjusting the pump speed in the field so that the float is positioned at the mark are both subject to error.

variation associated with the initial flow rate adjustment to be 3 ± 0.5 percent, which is less than the 5-percent value used by MSHA in the February 18, 1994 notice (59 FR 8356). In addition, based on a review of published results, MSHA has concluded that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is actually less than 3 percent. As explained in Appendix C of the July 7, 2000 proposed rule (*http://www.msha.gov/REGS/FEDREG/PROPOSED/2000PROP/00-14075.PDF*), these two sources of uncertainty can be combined to estimate uncertainty in the total volume of air pumped through the filter, as expressed by $CV_{pump.}$ After reviewing the available data and the comments submitted, MSHA concludes that the best available estimate of CV_{pump} is 4.2 percent.

Some commenters stated that MSHA improperly calculated the MRE equivalency of the CPDM which adversely impacts the accuracy of single shift samples for representing miner exposure. The CPDM performance was compared to the defined and accepted reference standard within the U.S. mining industry, which uses the gravimetric method, and was described in detail in a NIOSH paper by Page et al. (2008). In its evaluation of CPDM performance, NIOSH collected and analyzed samples that were statistically representative of the underground bituminous coal mining industry. The samples were collected at approximately 20 percent of the active mechanized mining units. Statistically representative samples are critical for correct estimation of the bias of the CPDM relative to the existing approved gravimetric method being used to collect respirable coal mine dust samples in coal mines, in that the bias will not necessarily be properly estimated from studies conducted in a limited number of mines and regions, regardless of the number of samples obtained at these locations. The methodology used by NIOSH was reviewed and approved by various members of the mining sector prior to data collection and prior to publishing the final results. In terms of bias, the results presented by one of the commenters supported those published by NIOSH, demonstrating that the average concentration measured by the approved CMDPSU (0.83 mg/m^3) was virtually identical to the CPDM average value of 0.82 mg/m^3. MSHA believes that NIOSH has conducted sufficient experiments with the CPDM that demonstrate that the precision of the CPDM is equivalent to that of the CMDPSU. Additional discussion on the accuracy of the CPDM is contained elsewhere in this preamble under Section III.C. concerning Feasibility.

Some commenters stated that MSHA did not properly evaluate the inaccuracy of single full-shift sampling because MSHA must analyze single full-shift results, not averages, which smooth inaccuracies and reduce the variability of single full-shift results. These commenters stated that this accuracy analysis was not conducted for both the CMDPSU and CPDM sampling methods for the proposed 1.0 mg/m^3 limit, the extended shift lower limits (e.g., 0.8 mg/m^3 for 10-hour shifts and 0.67 mg/m^3 for 12-hour shifts), and silica content reduced limits.

One commenter submitted sampling results and stated that the results demonstrate the inaccuracy of MSHA's single shift sampling results. According to the commenter: (1) MSHA ignored the accepted scientific concept of calculating the impact of compounding errors because MSHA did not analyze or consider the significant errors associated with silica analysis on its accuracy finding, even though MSHA reduces its coal mine dust standard for silica content, significantly impacting coal mine dust sampling accuracy; (2) MSHA did not evaluate increased errors and inaccuracy at the proposed lower exposure levels, mandated by the proposed adjustment for shift lengths, nor the proposed silica content exposure level reduction adjustment; and (3) MSHA did not analyze its accuracy finding at the lower levels of coal mine dust reported by current MSHA sampling data, acknowledged by the scientific literature to create greater levels of measurement inaccuracy than higher levels.

In response to the commenter's concerns, MSHA points out that the accuracy of a respirable dust concentration measurement is different from the concerns expressed by the commenters. To establish the accuracy of a single full-shift sample, MSHA need not address lower respirable dust levels, shift length, or silica content.

MSHA has a separate program in which silica analysis is used to set the applicable respirable coal mine dust standard, in accordance with section 205 of the Mine Act (30 U.S.C. 845), when the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. As shown by Equation 1 above, no silica analysis is used in a single, full-shift measurement of the respirable dust concentration. There is a critical difference between the process of setting a reduced standard and the use of single shift samples for compliance purposes. MSHA's measurements of quartz content are used to set standards that apply to multiple shifts, while MSHA's measurements of dust concentration relate to compliance on individual shifts. Any standard, whether or not reduced, remains in effect until it is revised based on a subsequent determination of quartz content. Therefore, the objective of a quartz content determination is to derive a standard that will continue to protect miners over multiple shifts.

Compliance with the applicable standard, on the other hand, must be maintained on each shift, in accordance with Section 202(b)(2) of the Mine Act. Therefore, as described earlier in this preamble, the measurement objective in determining compliance relates entirely to the specific shift on which the sample is taken. Because of this crucial difference in measurement objectives, averaging measurements of quartz content for purposes of setting a reduced standard has no bearing on the question of whether it is appropriate to average dust concentration measurements for purposes of a compliance determination. It is appropriate to average measurements of quartz content from several shifts to determine a standard that will apply to multiple shifts. But, since MSHA's objective is to regulate compliance on every shift, MSHA is discontinuing the existing practice of averaging respirable dust concentration measurements from multiple occupations on the same shift, based on MSHA-collected samples.

NIOSH's first independent analysis of MSHA's sampling and analytical method involved MSHA's 1995 field study data using CMDPSUs (Kogut et al., 1997). These data incorporated certain improvements that NIOSH had proposed for MSHA's sampling and analytical method. These improvements were later adopted for all MSHA inspector samples. From these data, NIOSH determined, with 95-percent confidence, that the true CV_{total} for MSHA's proposed sampling and analytical method was less than the target maximum value of 12.8 percent for dust concentrations of 0.2 mg/m^3 or greater (Wagner, 1995). This demonstrated that MSHA's sampling and analytical method for collecting and processing single full-shift samples would meet the NIOSH Accuracy Criterion whenever the true dust concentration was at least 0.2 mg/m^3.

In the same analysis, NIOSH also applied an indirect approach for assessing the accuracy of MSHA's sampling and analytical method. The

indirect approach involved combining separate estimates of weighing imprecision, pump-related variability, and variability associated with physical differences between individual sampler units. This indirect approach also indicated that MSHA's sampling and analytical method would meet the NIOSH Accuracy Criterion at concentrations greater than or equal to 0.2 mg/m^3, thereby corroborating the analysis of MSHA's field data.

MSHA later obtained data suggesting that filter capsules containing Tyvek® backup pads sometimes exhibit spurious changes in weight. Although the changes observed were relatively small compared to weight gains required for MSHA's noncompliance determinations, these changes led MSHA to begin using unexposed control filters in its enforcement program. The use of a control filter adjustment eliminates systematic errors due to such effects, but also affects the precision of a single, full-shift measurement. Consequently, NIOSH reevaluated the accuracy of MSHA's sampling and analytical method, taking into account the effects of using a control filter capsule (Wagner, 1997). After accounting for the effects of control filter capsules on both bias and precision, NIOSH concluded, based on both its direct and indirect approaches, that a single, full-shift measurement will meet the NIOSH Accuracy Criterion at true dust concentrations greater than or equal to 0.3 mg/m^3.

MSHA compiled data showing that weight stability of the filter capsule would be improved, minimizing pre- and post-weighing variability, by substituting stainless steel support grids for the Tyvek® support pads that were in use (Kogut et al., 1999). Consequently, NIOSH again reevaluated the accuracy of MSHA's method, this time taking into account the proposal to switch to stainless steel support grids (Grayson, 1999a; 1999b). After accounting for the effects of switching to stainless steel support grids, and of using unexposed control filters to adjust for any potential systematic errors that might remain, NIOSH once again concluded that a single, full-shift measurement met the NIOSH Accuracy Criterion at true dust concentrations greater than or equal to 0.3 mg/m^3.

The purpose of any measurement process is to produce an estimate of an unknown quantity. MSHA has concluded that its sampling and analytical method for inspectors meets the NIOSH Accuracy Criterion for true concentrations at or above 0.3 mg/m^3, but it is also possible to calculate the range of measurements for which the Accuracy Criterion is fulfilled. Since CV_{total} increases at the lower concentrations, all that is necessary is to determine the lowest measurement at which the NIOSH Accuracy Criterion is met. This is done as follows: if the true concentration exactly equaled the lowest concentration at which MSHA's sampling and analytical method meets the Accuracy Criterion (i.e., 0.3 mg/m^3), then no more than 5% of single, full-shift measurements are expected to exceed 0.36 mg/m^3 (Wagner, May 28, 1997). Conversely, if a measurement equals or exceeds 0.36 mg/m^3, it can be inferred, with at least 95% confidence, that the true dust concentration equals or exceeds 0.3 mg/m^3 (Wagner, 1997). Consequently, MSHA's improved sampling and analytical method satisfies the NIOSH Accuracy Criterion whenever a single, full-shift measurement is at or above 0.36 mg/m^3.

Future technological improvements in MSHA's CMDPSU sampling and analytical method may reduce CV_{total} below its current value. Also, as additional data are accumulated, updated estimates of CV_{total} may become available. However, so long as the method remains unbiased and CV_{total} remains at or below 12.8 percent, at a 95-percent confidence level, the sampling and analytical method will continue to meet the NIOSH Accuracy Criterion, and the present finding will continue to be valid.

NIOSH's studies of the equivalency of the CPDM with the CMDPSU are more representative and more appropriate for evaluating the suitability of the CPDM as a compliance instrument (Volkwein et al., NIOSH, RI 9663, 2004, and NIOSH RI 9669, 2006; Page et al., 2008) than sampling results submitted by the commenter. In terms of bias, the results presented by the commenter support those published by NIOSH demonstrating that the average concentration measured by the CMDPSU (0.83 mg/m^3) was virtually identical to the CPDM average value of 0.82 mg/m^3. The conclusion that should be drawn from both the commenter and NIOSH data sets is that there is no statistically significant difference and that the bias between the CPDM and the approved CMDPSU is zero.

MSHA has concluded that: Sufficient data exist for determining the uncertainty associated with a single, full-shift measurement; rigorous requirements are in place, as specified by 30 CFR parts 70, 71, and 90, to ensure the validity of a respirable coal mine dust sample; and valid statistical techniques were used to determine that MSHA's improved dust sampling and analytical method meets the NIOSH Accuracy Criterion. For these reasons, the Secretary of Labor finds that a single, full-shift CMDPSU concentration measurement at or above 0.36 mg/m^3 will accurately represent atmospheric conditions to which a miner is exposed during such shift. The Secretary also finds that a single, full-shift CPDM concentration measurement at or above 0.2 mg/m^3 will accurately represent atmospheric conditions to which a miner is exposed during such shift, based on Section III.C., Feasibility, of this preamble, two NIOSH Reports of Investigations (Volkwein et al., NIOSH RI 9663, 2004, and NIOSH RI 9669, 2006), and requirements in 30 CFR 74.8. Therefore, pursuant to section 202(f) (30 U.S.C. 842(f)) and in accordance with section 101 (30 U.S.C. 811) of the Mine Act, the 1972 Joint Notice of Finding is rescinded.

Both approved CMDPSU and CPDM sampling devices are capable of accurately measuring levels of respirable coal mine dust at low levels of exposure. The minimum detection limits of the commercial CPDM and the CMDPSU are 0.2 mg/m^3 and 0.11 mg/m^3, respectively (Page et al., 2008). Therefore, the concern expressed by some commenters that the CPDM is not as accurate as the CMDPSU is not an issue.

Some commenters stated that the single full-shift provision violates section 101(a)(6) of the Mine Act because MSHA has neither grounded its 2010 proposed single shift finding on any evaluation or declaration of increased risk of material impairment of health resulting from the 1972 Joint Finding, nor any health benefits resulting from the implementation of the 2010 proposed finding.

Section 101(a)(6) of the Mine Act provides that, in promulgating mandatory health standards, the Secretary shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health from exposure to toxic materials or harmful physical agents over his working life. (30 U.S.C. 811(a)(6)(A)).

MSHA complied with section 101(a)(6) of the Mine Act by addressing, in the QRA to the proposed rule, the following three questions regarding the proposed single shift sampling provision: (1) Whether potential health effects associated with existing exposure conditions constitute material impairments to a miner's health or functional capacity; (2) whether existing exposure conditions place miners at a significant risk of incurring any of these material impairments; and (3) whether

the proposed rule has the potential to substantially reduce those risks.

MSHA's QRA for the proposed rule included an observation of single-shift dust concentrations by occupation and estimated the reduction in health risks under the proposed respirable dust standard and single shift sampling provisions. The QRA for the proposal showed that these two proposed provisions should reduce the risks of CWP, severe emphysema, and death from non-malignant respiratory disease (NMRD).

The QRA for the final rule is changed from the QRA for the proposed rule because the final rule includes respirable dust standards of 1.5 mg/m^3 for most miners and 0.5 mg/m^3 for intake air and part 90 miners, rather than the proposed standards of 1.0 mg/m^3 for most miners and 0.5 mg/m^3 for intake air and part 90 miners. The QRA to the final rule establishes that exposures at existing levels are associated with CWP, COPD including severe emphysema, and death due to NMRD. All of these outcomes constitute material impairments to a miner's health or functional capacity. In addition, the QRA to the final rule establishes that, in every exposure category, including clusters of occupational environments showing the lowest average dust concentrations, existing exposure conditions place miners at a significant risk of incurring each of the material impairments considered. Lastly, the QRA to the final rule establishes that the final rule is expected to reduce the risks of CWP, severe emphysema, and NMRD mortality attributable to respirable coal mine dust exposures. Additional discussion is in the QRA to the final rule, which is summarized in Section III.B, Quantitative Risk Assessment, of this preamble.

In addition, MSHA projects that there would be additional reductions in cases of CWP, PMF, severe emphysema, and NMRD resulting from the definition of normal production shift in the final rule. If the normal production shift definition had been in effect in 2009, the amount of dust on the samples would have been higher because of the higher levels of production during sampling. Lowering exposures from these higher levels to the levels in the final rule will result in additional benefits beyond those associated with the recorded sampling results. MSHA used additional data from the feasibility assessment to extrapolate the further impact of the normal production shift provision. Additional discussion of the benefits of the final rule is provided in Section V.B., Benefits, of this preamble.

Some commenters stated that MSHA must consider whether single-shift sampling provides any benefit to miner health, or reduces protections, or whether it simply makes compliance more difficult and costly without corresponding benefits. These commenters analyzed the 71,959 sample results in the MSHA sampling database for 2010 and concluded that, under the proposed single-shift sample provision, there would be a dramatic increase in both the number of required operator DO and ODO samples and the number of violations for exceeding the permissible level.

MSHA estimates that the number of noncompliance determinations under the final rule will be less than those in the proposal because of changes made in the final rule. The final rule does not require an operator to sample 24 hours a day, 7 days per week. It also does not include the proposed 1.0 mg/m^3 standard and the proposed provision that a noncompliance determination could be made on a single full-shift operator sample. Instead, the final rule provides that a noncompliance determination for operator sampling is based on either two or three valid representative operator samples depending on where the sample is taken, or the average of all operator samples collected during the sampling period. In addition, the feasible dust standards in the final rule are 1.5 mg/m^3 for underground and surface mines and 0.5 mg/m^3 for intake air at underground mines and part 90 miners. Additional discussion on the feasibility of the dust standards in the final rule is provided in Section III.C., Feasibility, of this preamble. Additional discussion on the estimate of the number of required corrective actions and determinations of noncompliance in the final rule are provided in Appendix A of the REA to this final rule.

Noncompliance determinations based on single full-shift MSHA sampling will improve working conditions for miners because mine operators will be compelled either to implement and maintain more effective dust controls or to take corrective actions to lower those dust concentrations that are shown to be in excess of the standard. To the extent that the use of single full-shift samples reduces a miner's cumulative exposure to respirable coal mine dust, compared to the current method of dust sampling, single full-shift samples will reduce a miner's risk of developing occupational respiratory disease. The health benefit that each miner receives from this rule will vary depending on each miner's cumulative exposure over the years worked and other associated factors, such as the percentage of quartz and rank of the coal. Yet, all miners, irrespective of their cumulative exposure to respirable coal mine dust, will benefit by having fewer shifts with overexposures to respirable coal mine dust over the course of each miner's working life, thus reducing their occupational hazard—the risk of developing simple CWP or PMF.

Some commenters stated that the single full-shift sampling provision fails to comply with the Mine Act and the Administrative Procedure Act (APA) because it is not based on the best or latest data and science, and that the use of dormant rulemaking and stale data is arbitrary and capricious. These commenters stated that much of the information relied upon by MSHA to support the proposed accuracy finding, risk assessment, and rule provisions is contained in the 1995 NIOSH Criteria Document and the 1996 Dust Advisory Committee Report. The commenters added that even though MSHA stated in the proposed rule that new science changed the basis of the 2000 proposal, there is no evidence that MSHA re-examined the Criteria Document or Dust Advisory Committee Report, or the updated information it used for this rulemaking, in light of the latest scientific research, such as: (a) 2006–2010 NIOSH prevalence and MSHA exposure data; (b) technological advances like the deployment of the new sampler; and (c) published studies targeting silica as the cause of the geographically limited new CWP cases.

As discussed in Section III.A., Health Effects, of this preamble, MSHA evaluated over 150 peer-reviewed papers as part of the Agency's health effects assessment (75 FR 64460, October 19, 2010), in addition to the data from MSHA's proposed rule on Plan Verification (68 FR 10784, March 6, 2003). The literature review focused on studies of morbidity and mortality among coal miners in many countries, including the United States, South Africa, Europe, Britain, China, Australia, Turkey, and Japan. This research evaluated the relationship between respirable coal mine dust exposure and the respiratory diseases it causes. The research reported on the etiology of these adverse respiratory diseases, including coal workers pneumoconiosis (CWP), the more advanced form of CWP—progressive massive fibrosis (PMF), and nonmalignant respiratory diseases (NMRD), such as chronic obstructive pulmonary disease (COPD) and emphysema. The fact that similar results have been found in decades of research, covering a wide variety of populations

at various respirable coal mine dust exposure levels and working conditions, supports the determination that exposure to coal mine dust is a significant causal factor in the development of respiratory disease in coal miners. The conclusion of MSHA's review of this research is that chronic coal mine dust exposure causes respiratory health effects including CWP, PMF, COPD, and emphysema.

In addition, some commenters stated the latest report of scientific research on coal mine dust related disease published by NIOSH (2011) should have been included in the proposed rule. As stated previously in this preamble, MSHA did not use the 2011 NIOSH document in the proposed rule's health effects assessment because it was unavailable when the proposed rule was published in October 2010, otherwise it would have been included as a secondary literature source. The conclusions of the NIOSH (2011) review of literature since 1995 concur with MSHA's conclusions based on the same literature.

Some commenters stated that prevalence of coal workers' pneumoconiosis was overstated in the proposed rule and, if it does occur, is due to silica exposure. MSHA addressed prevalence issues and associated comments in Section III.A. Health Effects of the preamble of this final rule.

Commenters also suggested that silica exposure, not coal dust exposure, is behind the increased incidence of CWP. According to the research, exposure to quartz does not change the risk of CWP due to exposure to respirable coal mine dust. MSHA has concluded that evidence the Agency reviewed and presented indicates that respirable coal mine dust exposure is an independent causative factor in the development of CWP and NMRD, including COPD and emphysema. Additional detailed discussion on this topic is located in Section III.A. Health Effects and section III.B. Quantitative Risk Assessment of this preamble. In addition, some commenters stated that MSHA used old data to estimate risk. The QRA used exposure data from 2004 through 2008 and estimated risks based on those data.

Some commenters stated that, in relying on NIOSH Reports RI 9663 (USDHHS, CDC, NIOSH, 2004) and RI 9669 (USDHHS, CDC, NIOSH, 2006) to declare the accuracy and precision of the CPDM, the accuracy, precision and bias calculations relied upon by MSHA are false, based on how they were determined. These commenters further stated that the accuracy and precision of the new sampler are proven false by the side-by-side analysis submitted by a commenter that sets forth actual accuracy and precision data. These issues are discussed in Section III.C. of this preamble (Feasibility).

The variability reported by one of the commenters was primarily due to large sample variability (due to uncontrolled variables) known to exist in field samples, even when two identical samplers are placed side-by-side. Because the experimental design did not control for the variability resulting from the samplers themselves, the commenter's analysis was not an appropriate estimate of the CPDM's precision. Instead, the data introduced by the commenter included variability potentially caused by significant dust gradients known to exist, sampler inlet location differences, and the nature of mine ventilation. MSHA recognizes that ventilation currents found in mines can produce widely varying results or seemingly poor precision between two identical side-by-side instruments, even though their inlets may be separated by only a few inches. To correctly estimate the precision of the CPDM, the experimental design must minimize the uncontrolled variables in the sampling.

MSHA concurs with NIOSH's assessment, included in its comments to the rulemaking record, that the data and analysis introduced by the commenter are based upon flawed experimental design and analysis methods. NIOSH has conducted the necessary scientific studies, whose results were published in a peer-reviewed document, which adequately demonstrated the CPDM to be an accurate instrument by meeting the long-standing NIOSH Accuracy Criterion. The 2011 NIOSH approval of the commercial instrument as meeting the CPDM requirements of 30 CFR part 74 is further evidence of the CPDM's readiness as a compliance sampling device for use in coal mines, in that it is approved as meeting the required accuracy.

Some of the commenters stated that MSHA failed to analyze alternatives to the proposed single sample provision such as whether specific occupations or specific regions or specific conditions should be addressed, rather than imposing new industry-wide mandates.

As discussed in Section III.A., Health Effects, of the preamble, occupational lung disease continues to occur at in coal mines throughout the country, not just in specific occupations, regions, or under specific conditions.

In any event, MSHA considered alternatives to the proposed single sample provision. Section 202(f) of the Mine Act expresses a preference for measurements ''over a single shift only.'' Eighteen months after the enactment of Mine Act, the ''average concentration'' of respirable dust in coal mines was to be measured over a single shift only. The Senate's Report of its bill provides a clear interpretation of section 202(f) when read with the statutory language. The Senate Committee stated:

> The committee * * * intends that the dust level not exceed the specified standard during any shift. It is the committee's intention that the average dust level at any job, for any miner in any active working place during each and every shift, shall be no greater than the standard.

One of the alternatives that MSHA specifically considered, and requested comments on, was whether taking single shift samples to determine noncompliance with the proposed respirable dust standard should apply only to MSHA inspector samples, or to both operator and MSHA samples (75 FR 64415). In response, commenters only recommended as an alternative MSHA's existing sampling method consisting of averaging five samples, which applies to both MSHA inspector sampling and mine operator sampling.

During development of the final rule, MSHA evaluated alternatives to determining compliance. With respect to determining noncompliance based on operator samples, MSHA reevaluated its enforcement strategy. MSHA determined that the proposal would have resulted in little time for an operator to correct noncompliance determinations based on an operator's single sample. The final rule ensures that an operator will take corrective action on a single overexposure and, therefore, provides protection similar to the protection that would have been provided under the proposal. Under the final rule, when a single full-shift operator sample meets or exceeds the ECV that corresponds to the applicable standard and particular sampling device used, the operator is made aware of a potential problem with the dust controls being used. Therefore, the final rule requires that an operator must make approved respiratory equipment available; immediately take corrective action; and record the corrective actions. These protections are similar to those that would have been required by the proposal in the event that an operator's single full-shift sample exceeded the ECV for the standard. Therefore, miners will be afforded protection from overexposures during a single shift. In addition, the final rule, like the proposal, will provide miners' with the additional protection afforded by MSHA's single sampling under § 72.800. Under the final rule, only MSHA inspector samples will be used

to make compliance determinations based on a single full-shift measurement.

D. 30 CFR Part 75—Mandatory Safety Standards—Underground Coal Mines

1. Section 75.325 Air Quantity

Final § 75.325(a)(2), like the proposal, requires that the quantity of air reaching the working face be determined at or near the face end of the line curtain, ventilation tubing, or other ventilation control device. It also requires that if the curtain, tubing, or device extends beyond the last row of permanent roof supports, the quantity of air reaching the working face be determined behind the line curtain or in the ventilation tubing at or near the last row of permanent supports. It further requires that when machine-mounted dust collectors are used in conjunction with blowing face ventilation systems, the quantity of air reaching the working face be determined with the dust collector turned off.

Several commenters supported the proposal stating that determining air measurement reaching the working face with the dust collector (scrubber) turned off will ensure that the minimum amount of air will ventilate the face. Other commenters stated that the dust collector (scrubber) should not be turned off because the scrubbers are a useful means of controlling dust and mitigating exposure. Some of these commenters stated that the proposal appeared to discourage the use of scrubbers or limit the effectiveness of scrubber technology.

A dust collector, or scrubber, is a supplemental dust control device that is used primarily to assist in filtering dust from the air. After filtering, the scrubber exhausts clean air out the back of the dust collector system. Although a scrubber is a useful means of controlling dust and mitigating exposure to dust, the required quantity of air in the working face areas must be maintained to ensure that the dust collector operates efficiently. More importantly, the required quantity of air is essential to protecting miners' health.

Underground coal mines need adequate quantities of air to ventilate the working face to dilute, render harmless, and carry away flammable, explosive, noxious and harmful gases, dusts, smoke, and fumes. Before mining begins in a working face, an operator must measure the amount of air coming into that area. To ensure that the working face is ventilated with the amount of air required by the approved ventilation plan, final paragraph (a)(2), like existing § 75.325(a)(2), states where the air quantity measurement at the face must be taken: At or near the face end of the line curtain, ventilation tubing, or other ventilation control device. However, if the curtain, tubing, or device extends beyond the last row of permanent roof supports, the quantity of air reaching the working face must be determined behind the line curtain or in the ventilation tubing at or near the last row of permanent supports.

The requirement in the final paragraph (a)(2) that the quantity of air reaching the working face must be determined with the dust collector turned off does not discourage the use of scrubbers or limit the effectiveness of scrubber technology. Rather, the requirement ensures that the required quantity of air reaches the working face. Some mine operators that are using blowing ventilation in the working face are measuring the air quantity in that area after the continuous mining machine is moved into the area and the dust collector system on the machine is turned on. This practice does not provide an accurate measurement of the air coming into the working face. When the dust collector system is on, it acts as a vacuum. It pulls air from behind the line curtain and recirculates air from the scrubber exhaust, which results in a higher air quantity measurement in the working face than the actual quantity of air reaching the area. Therefore, the final paragraph (a)(2) requires mine operators who use a dust collector system in conjunction with blowing face ventilation systems to determine the air quantity with the dust collector turned off. This provision ensures that the mine operator gets a more accurate air quantity reading thereby providing better protection for the miners.

2. Section 75.332 Working Sections and Working Places

Final § 75.332(a)(1) is unchanged from existing § 75.332(a)(1). Proposed § 75.332(a)(1) would have revised existing § 75.332(a)(1) to require that each ''MMU'' on each working section and each area where mechanized mining equipment is being installed or removed, be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls. During the public comment period, MSHA solicited comment on the impact, if any, of proposed paragraph (a)(1) on current mining operations, any suggested alternatives, and how the alternatives would be protective of miners. Many commenters expressed economic and feasibility concerns with requiring that each MMU be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls. The majority of commenters did not support the proposal because it would prohibit an operator from using a single intake airway to provide intake air to two mechanized mining units. Many stated, for example, that operators would no longer be able to split intake air inby the section loading point to provide intake air to two MMUs. This practice, referred to as ''fish-tail'' ventilation, is used by numerous operators. Several commenters stated that proposed § 75.332(a)(1) would also eliminate the practice of two MMUs sharing a common section loading point.

Some commenters supported the proposed § 75.332(a)(1) requirement that a separate split of intake air be provided to each MMU. These commenters stated proposed § 75.332(a)(1) would better protect the health and safety of the miners working on the MMU by ensuring that fresh, uncontaminated air is provided to each MMU.

MSHA evaluated all the comments and determined not to include the proposed requirement in the final rule. MSHA does not intend to potentially restrict the use of a single intake airway to provide intake air to two mechanized mining units or eliminate the practice of two MMUs sharing a common section loading point. Therefore, existing § 75.332(a)(2) remains unchanged. However, in an effort to ensure miners are protected from exposures to excessive concentrations of respirable coal mine dust, the final rule establishes as ODOs, as defined in final § 70.2, all face haulage equipment operators who are on sections that use split ventilation (fish-tail ventilation) to provide intake air to two MMUs. Additional discussion on ODOs is located elsewhere in this preamble under §§ 70.201 and 70.208.

2. Section 75.350 Belt Air Course Ventilation

Final § 75.350(b)(3)(i)(A), like the proposal, includes the same requirement in existing § 75.350(b)(3)(i) that the average concentration of respirable dust in the belt air course, when used as a section intake air course, be maintained at or below 1.0 mg/m^3.

Final § 75.350(b)(3)(i)(B) is changed from the proposal. It requires that as of August 1, 2016, the average concentration of respirable dust in the belt air course, when used as a section intake air course, be maintained at or below 0.5 mg/m^3.

The proposal would have required the 0.5 mg/m^3 respirable dust standard be implemented 6 months after the effective date of the final rule. The

August 1, 2016 compliance date in final paragraph (b)(3)(i)(B) is 24 months after the effective date of the final rule and allows a mine operator adequate time to comply with the dust standard. It is also consistent with the 24-month period for other respirable dust standards in the final rule. MSHA did not receive any comments on the proposed 6-month period.

Several commenters supported the proposed 0.5 mg/m³ standard because of the large amount of dust generated and directed onto the working face. One commenter suggested reducing the standard to below 0.5 mg/m³, but did not recommend a specific level.

MSHA has historically required that a lower dust standard be maintained in the belt entry when belt air is used as a source of intake air. Maintaining the dust concentration in the belt entry at or below 0.5 mg/m³ when belt air is used as a source of intake air ensures that relatively clean air is used to ventilate the face where major dust generating sources are located. This will improve health protection for miners. Also, maintaining the lower dust level in the belt entry by using available engineering controls makes it more likely that an operator can maintain compliance with respirable dust standards in the MMU. The relatively clean air will supplement the intake air to the face which will further dilute the respirable dust levels generated in the face areas.

Final § 75.350(b)(3)(ii), like the proposal, makes a conforming change to existing § 75.350(b)(3)(ii). It requires that where miners on the working section are on a reduced standard below that specified in § 75.350(b)(3)(i), the average concentration of respirable dust in the belt entry must be at or below the lowest applicable standard on that section. Final paragraph (b)(3)(ii) replaces ''1.0 mg/m³'' in the existing standard with ''that specified in § 75.350(b)(3)(i)'' because the standard changes from 1.0 mg/m³ to 0.5 mg/m³ after 24 months. MSHA did not receive any comments on the proposal.

3. Section 75.362 On-Shift Examinations

Final § 75.362(a)(2) is similar to the proposal. Like the proposal, § 75.362(a)(2) requires that a person designated by the operator conduct an examination and record the results and the corrective actions taken to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan. However, § 75.362(a)(2) clarifies that in those instances when a shift change is accomplished without an interruption in production on a section, the examination must be made anytime within 1 hour after the shift change. The proposal would have required that the examination be made anytime within 1 hour of the shift change. Final paragraph (a)(2) clarifies that, when ''hot-seating,'' an on-shift examination must be done after the shift change so that the miners who are working after the shift change know that the dust controls are in place and working properly.

Final paragraph (a)(2), like the proposal, further requires that in those instances when there is an interruption in production during the shift change, the examination be made before production begins on a section. It also requires that deficiencies in dust controls be corrected before production begins or resumes.

Final paragraph (a)(2), like the proposal, requires that the examination include: Air quantities and velocities; water pressures and flow rates; excessive leakage in the water delivery system; water spray numbers and orientations; section ventilation and control device placement; roof bolting machine dust collector vacuum levels; scrubber air flow rate; work practices required by the ventilation plan; and any other dust suppression measures. In the final rule, MSHA reorganized the paragraph to clarify that the examination requires that all listed parameters must be measured or observed and the results recorded.

Lastly, paragraph (a)(2) in the final rule states that measurements of the air velocity and quantity, water pressure and flow rates are not required if continuous monitoring of these controls is used and indicates that the dust controls are functioning properly.

Final § 75.362(g)(2)(i) and (ii), like the proposal, requires that the certified person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan must certify by initials, date, and time on a board maintained at the section load-out or similar location showing that the examination was made prior to resuming production; and verify, by initials and date, the record of the results of the on-shift examination required under paragraph (a)(2) to assure compliance with the respirable dust control parameters specified in the mine ventilation plan. It further requires that the verification must be made no later than the end of the shift for which the examination was made.

Final § 75.362(g)(3), like the proposal, requires that the mine foreman or equivalent mine official countersign each examination record required under paragraph (a)(2) after it is verified by the certified person under paragraph (g)(2)(ii), and no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It further requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

Final § 75.362(g)(4), like the proposal, requires that records must be retained at a surface location at the mine for at least 1 year and must be made available for inspection by authorized representatives of the Secretary and the representative of miners.

One commenter stated that requiring mine management officials to countersign examination records would hold them accountable and emphasize the seriousness of these critical health protections. Another commenter stated that it was unnecessary to require every on-shift respirable dust control examination to be entered in a record book, signed and countersigned each shift by a certified person and the mine official. The commenter added that the rationale for requiring the records is no longer valid, since the CPDM records dust concentration data on the device.

In response to commenters' concerns, MSHA notes that an on-shift record of the results and corrective actions taken to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan is vital to protecting miners' health. The record assists a mine operator and MSHA in evaluating whether dust control parameters approved in the mine ventilation plan continue to be effective in controlling miners' respirable dust exposure. This is particularly important since the final rule does not require 24/7 continuous sampling of the MMU. The record provides a mine operator with an early warning of deteriorating dust controls. This will enable the mine operator to take corrective action before dust controls fail.

Paragraph (a)(2) in the final rule is consistent with the Dust Advisory Committee's unanimous recommendations that a mine operator should record the results of on-shift examinations and that MSHA should examine all recorded operational data and information on miner exposure and dust control measures as part of MSHA's ongoing and six-month review of the ventilation plan.

Similarly, final rule paragraphs (g)(2)(i) and (ii) ensure that the on-shift examinations are being conducted and that the certified person and other mine officials are aware of the examination

results and corrective action taken. The requirement to post a certification on a board maintained at the section load-out or similar location, under paragraph (g)(2)(i), allows miners on the section to confirm easily that the required examination was made in a timely manner.

In addition, verification by the certified person of the record of the examination results and subsequent countersigning of that record by a mine foreman or equivalent mine official, under paragraphs (g)(2)(ii) and (g)(3), emphasize accountability and ensure that a person with authority is informed and can implement any necessary changes to dust control parameters to maintain compliance with respirable dust standards. Verification helps ensure that an operator is complying with the provisions of the dust control parameters of the approved ventilation plan on all production shifts, not just when respirable dust samples are collected. This provides miners with some assurance that if the plan parameters control respirable dust when samples are being collected, then they will control respirable dust when samples are not being collected.

The requirement in final paragraph (g)(3) that the examination and corrective action record be kept in a secure book that is not susceptible to alteration or recorded electronically in a secure computer system will provide a history of the conditions documented at the mine. It will alert miners and mine management to recurring problems or conditions that need to be corrected, and corrective actions taken. The final rule allows records to be kept in the traditional manner in a secure book, or to be kept electronically in a secure manner. To ensure their integrity, the records must be maintained so that they are not susceptible to alteration. To satisfy the requirements of final paragraph (g)(3), electronically stored records are permitted provided that they are able to capture the information and signatures required, and are accessible to the representative of miners and MSHA. Electronic records meeting these criteria are as practical and as reliable as traditional records. Once records are properly completed and reviewed, mine management can use them to evaluate whether dust control parameters are adequate or need appropriate adjustments; whether the same conditions or problems, if any, are recurring; and whether corrective measures are effective.

Finally, final paragraph (g)(3) is consistent with the Dust Advisory Committee's unanimous recommendation that mine operators should conduct periodic reviews of the adequacy of the dust control parameters stipulated in the mine ventilation plan and make modifications necessary to achieve and maintain compliance with the dust standard.

Final paragraph (g)(4) is consistent with recordkeeping provisions in other MSHA standards. The one-year retention period is sufficient to allow for MSHA's evaluation during several inspections and inspection by miners' representatives. In addition, it is consistent with the Dust Advisory Committee's unanimous recommendation that recordkeeping be required as a part of on-shift examinations under § 75.362. The Committee explained that the results of the on-shift examinations were informative and should be recorded and shared with workers who have been properly trained concerning their interpretation and importance. Furthermore, the Committee unanimously recommended that MSHA inspections should include: A review of recorded parameter data; dust control measures observed in operation; and input from miners regarding whether the dust controls and coal production are representative of usual operations.

4. Section 75.371 Mine Ventilation Plan; Contents

Final § 75.371(f), like the proposal, requires the operator to specify in the mine ventilation plan for each MMU, the section and face ventilation systems used and the minimum quantity of air that will be delivered to the working section for each MMU, including drawings illustrating how each system is used, and a description of each dust suppression system used on equipment, identified by make and model, on each working section, including: (1) The number, types, location, orientation, operating pressure, and flow rate of operating sprays; (2) the maximum distance that ventilation control devices will be installed from each working face when mining or installing roof bolts in entries and crosscuts; (3) procedures for maintaining the roof bolting machine dust collection system in approved condition; and (4) recommended best work practices for equipment operators to minimize dust exposures. A nonsubstantive change was made in final paragraph (f)(3) to replace ''roof bolter'' with ''roof bolting machine.''

Final § 75.371(j) is unchanged from the proposal. It requires the operator to include in the mine ventilation plan the operating volume of machine mounted dust collectors or diffuser fans, if used (see § 75.325(a)(3)), including the type and size of dust collector screen used, and a description of the procedures to maintain dust collectors used on equipment.

Final § 75.371(t) is the same as the proposal, except for a conforming change. It requires that the operator specify locations where samples for ''designated areas'' will be collected, including the specific location of each sampling device, and the respirable dust control measures used at the dust generating sources for these locations (see §§ 70.207 and 70.209 of this chapter). Final paragraph (t) includes a reference to § 70.207 as a conforming change from the proposal. Except for the conforming change, final paragraph (t) is the same as existing § 75.371(t).

Some commenters generally supported the additional information required to be included in the approved mine ventilation plan. One commenter suggested that the operator should determine the best dust control methods rather than have MSHA impose unrealistic requirements that do not take into account different conditions at the mine.

In response to commenters, MSHA notes that it is each mine operator's responsibility to determine the best measures to control respirable dust at his mine. The final rule does not limit the operator's flexibility to make that determination or appropriate adjustments to mine ventilation and dust suppression systems for MMUs based on the conditions at the mine. The additional information required under the final rule will eliminate ambiguities in the mine ventilation plan requirements, assist miners in determining the types of dust controls being used, assist on-shift mine examiners in conducting adequate on-shift examinations of the dust controls, and allow operators, miners, and MSHA to observe and measure specific dust control parameters to better evaluate the effectiveness of dust control systems. In addition, if a respirable dust standard were exceeded, the operator and MSHA would be in a more advantageous position to determine what areas of dust control should be evaluated and adjusted to provide miners with protection from exposures to hazardous dust levels on each shift.

Final § 75.371(f), (j), and (t) are consistent with the recommendations of the 1992 Report of the Coal Mine Respirable Dust Task Group which identified insufficient detail and specificity as a major factor that can adversely affect the quality of dust control plans. In addition, final paragraphs (f)(1) through (3) are consistent with the recommendations of an enforcement initiative conducted by

MSHA's Respirable Dust Emphasis Teams, which focused on miners' exposures to respirable coal mine dust at selected underground coal mines as part of the Agency's Comprehensive Black Lung Initiative to End Black Lung—Act Now! MSHA determined that due to ambiguities in ventilation plans, miners had trouble determining the types of dust controls to use and how to evaluate their effectiveness. After reviewing results from this initiative, MSHA concluded that mine operators needed to include in mine ventilation plans: The type of water sprays and water volume at the minimum pressure to be used; orifice size; spray pattern; location where each type of spray will be used; and minimum number of sprays that will be maintained. MSHA also recommended that the ventilation plans include the location of curtains where roof bolting is being performed, since the distance from the face is important in the effectiveness of ventilation, and guidance was provided to mine operators on the proper maintenance of roof bolting machine dust collectors.

E. 30 CFR Part 90—Mandatory Health Standards—Coal Miners Who Have Evidence of the Development of Pneumoconiosis

1. Section 90.1 Scope

Final § 90.1, like the proposal, states that this part 90 establishes the option of miners who are employed at coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below the standard as specified in § 90.100. It also states that the rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases and that the rule also sets forth the operator's obligations, including respirable dust sampling for part 90 miners. Additionally, it states that this part 90 is promulgated pursuant to section 101 of the Act and supersedes section 203(b) of the Federal Mine Safety and Health Act of 1977, as amended.

Final § 90.1 revises existing § 90.1 by including surface coal miners. It extends to miners at all coal mines who have evidence of the development of pneumoconiosis the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below the standard as specified in § 90.100. Miners at surface coal mines, as well as miners at underground mines, are at risk of developing chronic lung disease as a result of exposure to respirable coal mine dust. In the absence of medical monitoring and intervention, a miner may continue to be exposed, allowing the disease to progress so that the miner may suffer material impairment of health or functional capacity.

Commenters supported extending the scope of part 90 to surface coal miners.

2. Section 90.2 Definitions

The final rule does not include the proposed definitions for *Weekly Accumulated Exposure* and *Weekly Permissible Accumulated Exposure* that would have applied when operators use a CPDM to collect respirable dust samples under proposed part 90. These two definitions are not needed since the related proposed sampling requirements are not included in the final rule. In addition, final part 90 does not include the existing definitions for ''surface work area of an underground coal mine'' and ''underground coal mine'' as those terms are no longer used.

Act

The final rule, like the proposal, defines Act as the Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164 and Public Law 109–236.

Active Workings

Final § 90.2, like the proposal, makes no change to the existing definition of active workings.

Approved Sampling Device

The final § 90.2 definition, like the proposal, is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Certified Person

Final § 90.2 makes nonsubstantive changes to clarify the existing definition of certified person. It does not include the parenthetical text following the references to §§ 90.202 and 90.203.

Coal Mine Dust Personal Sampler Unit (CMDPSU)

The final § 90.2 definition, like the proposal, is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Concentration

Final § 90.2, like the proposal, makes no change to the existing definition of concentration.

Continuous Personal Dust Monitor (CPDM)

The final § 90.2 definition, like the proposal, is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

District Manager

Final § 90.2, like the proposal, makes no change to the existing definition of District Manager.

Equivalent Concentration

The final § 90.2 definition is changed from the proposal. It is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Mechanized Mining Unit (MMU)

The final definition of MMU is clarified from the proposal. It is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

MRE Instrument

Final § 90.2, like the proposal, makes no change to the existing definition of MRE instrument.

MSHA

Final § 90.2, like the proposal, makes no change to the existing definition of MSHA.

Normal Work Duties

Final § 90.2, like the proposal, makes no change to the existing definition of normal work duties.

Part 90 Miner

The final definition of part 90 miner is substantially the same as the proposal. Like the proposal, the definition applies to a miner employed at a coal mine and replaces the 1.0 mg/m^3 standard in the existing definition with ''the applicable standard.'' This change reflects that, under final § 90.100, the respirable dust standard changes from 1.0 mg/m^3 to 0.5 mg/m^3 24 months after the effective date of the rule.

Quartz

The final definition of quartz is changed from the proposal. It is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Representative Sample

The final rule defines a representative sample as a respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels in the working environment of the part 90 miner when

the miner is performing normal work duties.

The final definition is identical to the proposed definition except that the language, ''expressed as an equivalent concentration'' is added. The added text clarifies that each respirable dust sample measurement must be converted to a concentration that is equivalent to one measured by the MRE instrument. MSHA did not receive comment on the proposed definition.

Under the final rule, MSHA would consider ''typical dust concentration levels'' to exist during sampling if they approximate and are characteristic of the part 90 miner's dust concentration levels during periods of non-sampling. Samples would be required to be taken while the part 90 miner performs ''normal work duties,'' as that term is defined in § 90.2. A sample that is taken when the part 90 miner is engaged in an atypical task, or some other activity that does not mirror the duties that the miner performs on a routine, day-to-day basis in the part 90 miner's job classification at the mine, would not be considered a representative sample of the part 90 miner. The final definition ensures that operators conduct respirable dust sampling when working conditions and work duties accurately represent part 90 miners' dust exposures. Ensuring that dust samples for part 90 miners are representative of their exposures is important for these miners, as they already have medical evidence of the development of pneumoconiosis. The final definition of representative samples will provide protection for miners' health by allowing MSHA to objectively evaluate the functioning of operators' dust controls and the adequacy of operators' approved plans.

Respirable Dust

Final § 90.2 makes nonsubstantive changes to the existing definition of respirable dust. It is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Secretary

Final § 90.2 makes nonsubstantive changes to the existing definition of Secretary. It is the same as the final part 70 definition discussed elsewhere in the preamble related to final § 70.2.

Secretary of Health and Human Services

Final § 90.2, like the proposal, makes no change to the existing definition of Secretary of Health and Human Services.

Transfer

Final § 90.2 makes a nonsubstantive change to the existing definition of transfer. It uses the abbreviation MMU for mechanized mining unit.

Valid Respirable Dust Sample

For clarification, the final rule revises the definition under existing § 90.2 for a *valid respirable dust sample* to mean a respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

The final definition adds language to clarify that for CPDM samples, the data files are ''electronically'' transmitted to MSHA, and not physically transmitted like samples collected with the CMDPSU. The proposed rule did not include this clarification.

3. Section 90.3 Part 90 Option; Notice of Eligibility; Exercise of Option

Final § 90.3(a), like the proposal, requires that any miner employed at a coal mine who, in the judgment of the Secretary of HHS, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of HHS, or based on other medical examinations must be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the standard. It further requires that each of these miners be notified in writing of eligibility to exercise the option.

Final paragraph (a) revises existing § 90.3(a) by extending to surface coal miners the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below the standard. As explained in the preamble discussion of § 90.1, miners at surface coal mines, as well as miners at underground coal mines, are at risk of developing chronic lung disease as a result of exposure to respirable coal mine dust. In addition, it replaces the ''1.0 milligrams per cubic meter of air'' standard with ''the applicable standard.'' This change reflects that, under final § 90.100, the respirable dust standard changes from 1.0 mg/m^3 to 0.5 mg/m^3 24 months after the effective date of the rule.

Final § 90.3(b) is the same as existing § 90.3(b). It requires that any miner who is a section 203(b) miner on January 31, 1981, will be a part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift, and respirable dust protection. The proposal did not include any changes to existing § 90.3(b).

Final § 90.3(c) is the same as existing § 90.3(c). It requires that any part 90 miner who is transferred to a position at the same or another coal mine will remain a part 90 miner entitled to full rights under this part at the new work assignment. The proposal did not include any changes to existing § 90.3(c).

Final § 90.3(d), like the proposal, requires that the option to work in a low dust area of the mine may be exercised for the first time by any miner employed at a coal mine who was eligible for the option under the old section 203(b) program (36 FR 20601, October 27, 1971, precursor to the current part 90 program), or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209. Final paragraph (d) includes a conforming change to existing § 90.3(d) to extend the part 90 transfer option to surface coal miners. It also makes a nonsubstantive change from the proposal by including ''(36 FR 20601, October 27, 1971),'' which is the citation to the section 203(b) program that is stated in the existing definition.

Final § 90.3(e), like the proposal, requires that the option to work in a low dust area of the mine may be re-exercised by any miner employed at a coal mine who exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209. It further requires that the request should include the name and address of the mine and operator where the miner is employed. Final paragraph (e) includes a conforming change to existing § 90.3(e) to extend the part 90 transfer option to surface coal miners. It also makes a nonsubstantive change from the proposal by including ''(36 FR 20601, October 27, 1971),'' which is the citation to the section 203(b) program that is stated in the existing definition.

Final § 90.3(f) is substantially the same as existing § 90.3(f). It states that no operator shall require from a miner a copy of the medical information received from the Secretary or Secretary

of HHS. The proposal did not include any changes to existing § 90.3(f). Final paragraph (f) includes a nonsubstantive change. It uses the abbreviation HHS.

A few commenters recommended that mandatory transfers to less dusty areas of the mine be required for all part 90 miners. Some commenters supported mandatory part 90 transfers for miners diagnosed with more severe CWP (e.g., Category 2). However, MSHA recognizes that a mandatory transfer program would violate the confidentiality of the medical monitoring program. It would reveal information about a miner's medical condition and would have a chilling effect on a miners' participation in the medical monitoring program. Consequently, the final rule does not include a mandatory transfer provision.

Some commenters recommended that miners who have developed occupational chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure be included as part 90 miners with the transfer option since it would reduce the risk of worsening their lung disease.

While the final rule includes a new requirement for spirometry, it continues to afford the part 90 transfer option only to coal miners who have been diagnosed with pneumoconiosis based on x-ray evidence. Administration of chest x-rays and the criteria used in diagnosing pneumoconiosis are governed by HHS regulations under 42 CFR part 37. The addition of spirometry examinations will provide miners with supplementary information concerning the health of their lungs on which to base future potential occupational exposures. With this information, for example, miners may choose to bid on less dusty jobs or modify their work practices to minimize coal mine dust exposures.

4. Section 90.100 Respirable Dust Standard

Final § 90.100, is almost identical to proposed § 90.100. It requires that after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the part 90 miner in the active workings of the mine is exposed, as measured with an approved sampling device and expressed in terms of an equivalent concentration, at or below: (a) 1.0 milligrams of respirable dust per cubic meter of air (mg/m^3), and (b) 0.5 mg/m^3 as of August 1, 2016.

Final § 90.100 makes a nonsubstantive change from proposed § 90.100. The term ''expressed,'' which was inadvertently omitted from the proposal, is added.

Final paragraph (b) replaces the proposed 6-month phase-in period with an implementation date that is 24 months after the effective date of the final rule. This is consistent with the time periods in final §§ 70.100(b) and 71.100(b).

The 0.5 mg/m^3 standard provides protection for part 90 miners when coupled with the final rule's requirements that the sampling devices remain operational during the part 90 miner's entire shift, including time spent performing normal work duties and traveling to and from the assigned work location, and that the required samples are representative of the miner's exposure while performing normal work duties. The final 0.5 mg/m^3 standard will ensure that part 90 miners, who are already suffering from decreased lung function, are adequately protected. In addition, most operators are already in compliance with the final standard and MSHA has concluded that the final standard is feasible. The feasibility of the 0.5 mg/m^3 standard is discussed in more detail elsewhere in this preamble under Section III. C., concerning the Technological Feasibility of Achieving the Required Dust Standards. Commenters supported the proposed standard.

5. Section 90.101 Respirable Dust Standard When Quartz Is Present

Final § 90.101(a), like proposed § 90.101(a), requires that each operator continuously maintain the average concentration of respirable quartz in the mine atmosphere during each shift to which a part 90 miner in the active workings of each mine is exposed at or below 0.1 mg/m^3 (100 micrograms per cubic meter or μg/m^3) as measured with an approved sampling device and expressed in terms of an equivalent concentration.

Final paragraph (b), like the proposed rule, requires that when the mine atmosphere of the active workings where the part 90 miner performs his or her normal work duties exceeds 100 μg/m^3 of respirable quartz dust, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a part 90 miner is exposed as measured with an approved sampling device and expressed in terms of an equivalent concentration at or below the applicable standard. It also states that the applicable standard is computed by dividing the percent of quartz into the number 10 and that application of this formula must not result in an applicable standard that exceeds the standard specified in § 90.100.

Final paragraphs (a) and (b) include a nonsubstantive change and add the term ''expressed'' which was inadvertently omitted from the proposal, but is contained in existing § 90.101.

Final § 90.101, like proposed § 90.101, includes an example of how a reduced standard is calculated, based on the equivalent concentration of 0.5 mg/m^3 dust standard. The example states that: Suppose a valid respirable dust sample with an equivalent concentration of 0.50 mg/m^3 contains 25.6% of quartz dust, which corresponds to a quartz concentration of 128 μg/m^3. The average concentration of respirable dust in the mine atmosphere associated with that part 90 miner must be maintained on each shift at or below 0.4 mg/m^3 (10/25.6% = 0.4 mg/m^3).

Commenters supported the proposed standard.

6. Section 90.102 Transfer; Notice

Final § 90.102(a), like the proposal, requires that whenever a part 90 miner is transferred in order to meet the standard (§ 90.100, the respirable dust standard or § 90.101, the respirable dust standard when quartz is present), the operator must transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. It further provides that the operator may transfer a part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer. It states that the requirements of this paragraph do not apply when the respirable dust concentration in a part 90 miner's work position complies with the standard but circumstances, such as reductions in workforce or changes in operational status, require a change in the miner's job or shift assignment.

Final paragraph (a) revises existing § 90.102(a) by establishing an exception to the transfer requirement. The exception is consistent with existing Agency policy, which is to accommodate an operator's good faith need to reassign a part 90 miner when unforeseen circumstances and unexpected mine or market conditions arise. The exception provides a mine operator with flexibility with respect to the assignment of a part 90 miner without compromising the objectives of the part 90 program.

The Agency received one comment on proposed § 90.102 in which the commenter expressed general support for the standard.

Final § 90.102(b) is unchanged from the proposal and substantially the same as existing § 90.102(b). It requires that on or before the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator must give the District Manager written notice of the occupation and, if applicable, the MMU unit to which the part 90 miner will be assigned on the 21st calendar day following receipt of the notification from MSHA. The proposal did not include any substantive change to existing § 90.102(b). Like the proposal, final paragraph (b) makes nonsubstantive changes to existing § 90.102(b).

Final § 90.102(c) is unchanged from the proposal and substantially the same as existing § 90.102(c). It requires that after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator must give the District Manager written notice before any transfer of a part 90 miner. It further requires that this notice include the scheduled date of the transfer. The proposal did not include any substantive change to existing § 90.102(c). Final paragraph (c) includes a nonsubstantive change to existing § 90.102(c).

7. Section 90.103 Compensation

Final § 90.103(a) is unchanged from the proposal and substantially the same as existing § 90.103(a). It requires that the operator compensate each part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3. The proposal did not include any substantive change to existing § 90.103(a). Final paragraph (a) makes a nonsubstantive change to existing § 90.103(a). It does not include the parenthetical text following the reference to § 90.3.

Final § 90.103(b) is unchanged from the proposal. It requires that, whenever a part 90 miner is transferred, the operator must compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer. The proposal did not include any changes to existing § 90.103(b).

Final § 90.103(c), like the proposal, requires that once a miner has been placed in a position in compliance with the provisions of part 90, paragraphs (a) and (b) of this section do not apply when the part 90 miner initiates and accepts a change in work assignment for reasons of job preference.

One commenter generally expressed support for the proposal.

Final paragraph (c) is consistent with MSHA's longstanding policy of not applying the part 90 miner compensation provisions under the circumstances where, once a miner has been placed in a position that complies with the provisions in part 90, the part 90 miner on his own initiative applies for and accepts another job in a work area with an average respirable dust concentration at or below the part 90 respirable dust standard. As an example: A miner exercised the part 90 option when the miner's job paid $20 per hour. If the operator keeps the part 90 miner in the same work position because compliance with the part 90 respirable dust standard is maintained, or if the operator transfers the miner to a new work position to achieve compliance with part 90, the miner cannot be paid less than $20 per hour—the amount paid immediately before exercising the option. However, once the operator has placed the miner in a position that complies with the provisions of part 90, if the miner prefers a different job and initiates and accepts a job change that only pays $17 per hour, the miner would receive $17 per hour in the new position. Under final paragraph (c), a miner-initiated job change to a position that is at or below the part 90 respirable dust standard would not constitute a waiver of other part 90 rights. In the new job, the miner would retain part 90 status and all other requirements of part 90 continue in effect, including the operator's obligations to continuously maintain the part 90 respirable dust standard and to give MSHA notice whenever the miner's work assignment changes or lasts longer than one shift.

Final § 90.103(d) is unchanged from the proposal. It is redesignated from and is the same as existing § 90.103(c). It requires that the operator compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part. The proposal did not include any changes to existing § 90.103(c).

Final § 90.103(e) is unchanged from the proposal. It is redesignated from and is substantially the same as existing § 90.103(d). It requires that, in addition to the compensation required to be paid under paragraphs (a), (b), and (d) of this section, the operator must pay each part 90 miner the actual wage increases that accrue to the classification to which the miner is assigned. Final paragraph (e), like the proposal, includes a conforming change referring to paragraphs (a), (b), and (d) of this section.

Final § 90.103(f), like the proposal, is redesignated from and is substantially similar to existing § 90.103(e). It requires that if a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under § 90.3, the miner's regular rate of pay for purposes of paragraphs (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the part 90 miner at his or her regular work classification rate regardless of the temporary wage rate. The proposal did not include any changes to existing § 90.103(e). Final paragraph (e) includes two nonsubstantive changes. It deletes the parenthetical text following the reference to § 90.3 and changes the word ''paragraph'' in the proposal to ''paragraphs''.

Final § 90.103(g)(1) and (2) is substantially the same as the proposal and is redesignated from existing § 90.103(f)(1) and (2). It requires that if a part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the part 90 option was incorrect, the operator must retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the rate of pay provided in paragraphs (a), (b), (d), and (e) of this section, until:

(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or

(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under § 90.3 or under the old section 203(b) program (36 FR 20601, October 27, 1971).

(i) When such a position is available, the operator shall offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.

(ii) If the affected miner accepts the available position in writing, the operator shall implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the available position in writing, the miner may be reassigned and protections under part 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

The proposal did not include any substantive changes to existing § 90.103(f)(1) and (2). Final paragraph (g)(2) makes a nonsubstantive change from the proposal by including ''(36 FR 20601, October 27, 1971),'' which is the citation to the section 203(b) program that is stated in the existing definition.

8. Section 90.104 Waiver of Rights; Re-Exercise of Option

Final § 90.104 is unchanged from the proposal. It provides that a part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under part 90 by: (1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part; (2) applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding the standard; or (3) refusing to accept another position offered by the operator at the same coal mine that meets the requirements of §§ 90.100, 90.101 and 90.102(a) after dust sampling shows that the present position exceeds the standard.

Final paragraph (a)(1) is the same as existing § 90.104(a)(1). Final paragraphs (a)(2) and (3) change existing § 90.104(a)(2) and (3) by including the term ''applicable standard'' rather than ''1.0 milligrams per cubic meter of air or the respirable dust standard established by § 90.101 (Respirable dust standard when quartz is present.'' These are conforming changes consistent with other provisions of the final rule.

Final § 90.104(b), like the proposal, provides that if rights under part 90 are waived, the miner gives up all rights under part 90 until the miner re-exercises the option in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option). Final paragraph (b) is the same as existing § 90.104(b).

Final § 90.104(c), like the proposal, provides that if rights under part 90 are waived, the miner may re-exercise the option under this part in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option) at any time. Final paragraph (c) is the same as existing § 90.104(c).

MSHA received one comment expressing general support for this section and it is finalized as proposed.

9. Section 90.201 Sampling; General and Technical Requirements

Final § 90.201 addresses general and technical requirements concerning operator sampling. One commenter expressed support for the proposal.

Final paragraph (a) is substantially similar to the proposal. It requires that an approved coal mine dust personal sampler unit (CMDPSU) must be used to take samples of the concentration of respirable coal mine dust in the working environment of each part 90 miner as required by this part for the first 18 months after the effective date of the rule. Paragraph (a) changes the implementation date for using the approved CPDM from the proposed 12 months to 18 months after the effective date of the rule. On February 1, 2016, part 90 miners must be sampled only with a CPDM as required by this part, and an approved CMDPSU must not be used unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling. The rationale for paragraph (a) is the same as that for final § 70.201(a), which is discussed elsewhere in this preamble. MSHA received no comments on the proposal.

Final paragraph (b) is like the proposal with nonsubstantive changes. It requires that if using a CMDPSU, the sampling device must be worn or carried to and from each part 90 miner, and if using a CPDM, the sampling device must be worn by the part 90 miner at all times. It also requires that approved sampling devices be operated portal-to-portal and remain operational during the part 90 miner's entire shift, which includes the time spent performing normal work duties and while traveling to and from the assigned work location. It further requires that if the work shift to be sampled is longer than 12 hours and the sampling device is a CMDPSU, the operator must switch-out the unit's sampling pump prior to the 13th-hour of operation; and, if the sampling device is a CPDM, the operator must switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.

Paragraph (b) is similar to final § 70.201(b). The rationale for paragraph (b) is the same as that for final § 70.201(b), which is discussed elsewhere in this preamble. MSHA received no comments on the proposal.

Final paragraph (c) is unchanged from the proposal and is identical to existing requirements. It requires that unless otherwise directed by the District Manager, the respirable dust samples required under this part using a CMDPSU be taken by placing the sampling device as follows: (1) On the part 90 miner; (2) on the piece of equipment which the part 90 miner operates within 36 inches of the normal working position; or, (3) at a location that represents the maximum concentration of dust to which the part 90 miner is exposed. MSHA received no comments on the proposal.

Final paragraph (d), like the proposal, requires that if using a CMDPSU, one control filter must be used for each shift of sampling. It further requires that each control filter must: (1) Have the same pre-weight date (noted on the dust data card) as the filter used for sampling; (2) remain plugged at all times; (3) be used for the same amount of time, and exposed to the same temperature and handling conditions as the filter used for sampling; and (4) be kept with the exposed samples after sampling and in the same mailing container when transmitted to MSHA. Final paragraph (d)(4) clarifies that the control filter must be in the same mailing container as the exposed samples when transmitted to MSHA. MSHA received no comments on the proposal.

In addition, paragraphs (d)(1)–(4) are identical to final § 70.201(d)(1)—(4). The rationale for paragraphs (d)(1)–(4) is discussed under final § 70.201(d)(1)–(4) of this preamble.

Final paragraph (e), like the proposal, requires that the respirable dust samples required by this part and taken with a CMDPSU must be collected while the part 90 miner is performing normal work duties. Paragraph (e) is substantially the same as the existing requirement. MSHA received no comments on the proposal. Paragraph (e) is unchanged from the proposal.

Final paragraph (f), like the proposal, requires that records showing the length of each shift for each part 90 miner be made and retained for at least six months, and be made available for inspection by authorized representatives of the Secretary and submitted to the District Manager when requested in writing. Paragraph (f) is similar to final § 70.201(e). The rationale for paragraph (f) is discussed elsewhere in this preamble under § 70.201(e). Paragraph (f) is unchanged from the proposal.

Final paragraph (g), like the proposal, requires that upon request from the District Manager, the operator must submit the date and time any respirable dust sampling required by this part will begin. It further requires that this information be submitted at least 48 hours prior to scheduled sampling. Paragraph (g) is identical to final § 70.201(f). The rationale for paragraph (g) is discussed under final § 70.201(f). Paragraph (g) is unchanged from the proposal.

Final paragraph (h) is substantially the same as the proposal. It requires that operators using CPDMs provide training to all part 90 miners. It makes nonsubstantive changes to require that the training must be completed prior to

a part 90 miner wearing a CPDM and then every 12 months thereafter.

Final paragraphs (h)(1)–(4) are similar to proposed paragraphs (h)(1)–(5). Proposed paragraph (h)(2) would have required miners to be instructed on how to set up the CPDM for compliance sampling. The final rule requires mine operators to have certified persons set up the CPDM for compliance. Therefore, the final rule does not include this proposed provision.

Paragraph (h)(1) is similar to proposed (h)(5). Like the proposal, it requires that the training include the importance of monitoring dust concentrations and properly wearing the CPDM. Paragraph (h)(1) makes a conforming change. The proposal would have required training on the importance of ''continuously'' monitoring dust concentrations. Since continuous monitoring is not required by the final rule, the term ''continuously'' is not included in paragraph (h)(1).

Final paragraph (h)(2) is the same as proposed (h)(1). It requires that the training include explaining the basic features and capabilities of the CPDM.

Final paragraph (h)(3), like the proposal, requires that the training include discussing the various types of information displayed by the CPDM and how to access that information.

Final paragraph (h)(4), like the proposal, requires that the training include how to start and stop a short-term sample run during compliance sampling.

The training requirements of paragraphs (h)(1)–(4) are identical to the training requirements of final § 70.201(h)(1)–(4). The rationale for paragraph (h)(1)–(4) is discussed under final § 70.201(h)(1)–(4) of this preamble.

Final paragraph (i), like the proposal, requires that an operator keep a record of the CPDM training at the mine site for 24 months after completion of the training. It also provides that an operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. It further requires that upon request from an authorized representative of the Secretary or Secretary of HHS, the operator must promptly provide access to any such training records. Final paragraphs (i)(1)–(3) require the record to include the date of training, the names of miners trained, and the subjects included in the training.

Paragraph (i) includes a non-substantive change by replacing the proposed term ''2 years'' with ''24 months.''

Final paragraphs (i)(1)–(3) are new and were added to clarify that the record must contain sufficient information for an authorized representative of the Secretary or Secretary of HHS to determine that the operator has provided CPDM training in accordance with requirements in paragraph (h). Like final § 70.201(i), this is the type of information that is generally required for all training records to establish that the training has occurred.

The requirements of paragraph (i) are identical to final § 70.201(i). The rationale for paragraph (i) is discussed elsewhere in this preamble under final § 70.201(i).

Final paragraph (j) is new. It provides that an anthracite mine using the full box, open breast, or slant breast mining method may use either a CPDM or a CMDPSU to conduct the required sampling. It requires that the mine operator notify the District Manager in writing of its decision to not use a CPDM.

Paragraph (j) is identical to final § 70.201(j). The rationale for paragraph (j) is discussed elsewhere in this preamble under final § 70.201(j).

10. Sections 90.202 Certified Person; Sampling and 90.203 Certified Person; Maintenance and Calibration

Final §§ 90.202 and 90.203 are identical to final §§ 70.202 and 70.203. Comments on proposed §§ 90.202 and 90.203 were the same as comments on proposed §§ 70.202 and 70.203. The comments and MSHA's rationale are discussed elsewhere in this preamble under §§ 70.202 and 70.203.

11. Section 90.204 Approved Sampling Devices; Maintenance and Calibration

Final § 90.204 and its rationale are identical to final § 70.204, discussed elsewhere in this preamble under final § 70.204. One commenter generally supported proposed § 90.204.

12. Section 90.205 Approved Sampling Devices; Maintenance and Calibration

Final § 90.205 and its rationale are identical to final § 70.205, discussed elsewhere in this preamble under final § 70.205. One commenter generally supported proposed § 90.205.

13. Section 90.206 Exercise of Option or Transfer Sampling

Final § 90.206 is derived from existing § 90.207 pertaining to ''Compliance sampling.'' Final § 90.206 changes the existing section heading to distinguish sampling that occurs when a part 90 miner opts to exercise his option to work in a low dust area of a mine or when a transfer in the part 90 miner's work assignment occurs from the quarterly compliance sampling required under final § 90.207.

Final § 90.206(a)(1) and (2) require that the operator take five valid representative dust samples for each part 90 miner within 15 calendar days after: (1) The 20-day period specified for each part 90 miner in § 90.100; and (2) implementing any transfer after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine. Final paragraph (a)(1) is the same as proposed § 90.207(a)(1). Final paragraph (a)(2) is the same as proposed § 90.207(a)(3). Proposed § 90.207(a)(2), which was the same as existing § 90.207(a)(2), would have specified the action that an operator would take when the operator received notification from MSHA that compliance samples taken under part 90 exceeded the standard. Proposed § 90.207(a)(2) is not included in the final rule because final § 90.207(c) specifies the actions that a mine operator must take when part 90 miner sample results show respirable dust overexposures.

Final § 90.206(b), like the proposal, provides that noncompliance with the standard be determined in accordance with final § 90.207(d). Under the proposal, noncompliance determinations would have been determined in accordance with proposed § 90.207(d) pertaining to a part 90 miner's single-shift exposure, as well as the miner's weekly accumulated exposure. However, for reasons discussed elsewhere in this preamble, the proposed single-shift sampling and weekly accumulated exposure provisions for operators' sampling are not included in the final rule. Rather, final § 90.207(d) lists the two means by which noncompliance with the standard will be determined and is discussed elsewhere in this preamble under § 90.207(d). Final paragraph (b) ensures that operators are aware how compliance determinations will be made for exercise of option and transfer samples taken under final paragraphs (a)(1) and (a)(2).

Final § 90.206(c), like the proposal, provides that upon issuance of a citation for a violation of the standard, the operator must comply with § 90.207(f). Final paragraph (c) is derived from existing § 90.201(d), which requires corrective action and an additional five samples from the part 90 miner after a citation is issued. Final paragraph (c) ensures that a mine operator is aware of the abatement termination procedures that apply when a citation is issued for respirable dust overexposure on

samples taken after a miner exercises the part 90 option to work in a low dust area of the mine or when a part 90 miner is transferred.

The Agency received one comment on proposed § 90.207 in which the commenter expressed general support for the proposal.

14. Section 90.207 Quarterly Sampling

Final § 90.207 is redesignated proposed § 90.208 regarding procedures for sampling with CMDPSUs and § 90.209 regarding procedures for sampling with CPDMs. It revises the sampling requirements of existing §§ 90.207 and 90.208. The section heading is changed from the proposal by adding ''quarterly'' to distinguish the required sampling period under § 90.207 from that specified for exercise of option or transfer sampling under final § 90.206. It does not include the specific sampling device because the device is specified under final § 90.201.

According to final § 90.201(a), part 90 miners must be sampled with a CMDPSU on the effective date of the final rule. On February 1, 2016, part 90 miners must be sampled only with an approved continuous personal dust monitor (CPDM) as required by this part and an approved CMDPSU must not be used, unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling.

Final § 90.207(a) is substantially similar to proposed § 90.208(a). It requires that each operator must take five valid representative samples every calendar quarter from the environment of ''each'' part 90 miner while performing normal work duties. Final paragraph (a) further requires that part 90 miner samples must be collected on consecutive work days. The quarterly periods are: (1) January 1–March 31; (2) April 1–June 30; (3) July 1–September 30; (4) October 1–December 31.

Final paragraph (a) does not include the 24/7 continuous sampling frequency in proposed § 90.209(a) while using a CPDM. Proposed § 90.209(a) would have required that, when using the CPDM, each operator sample the working environment of the part 90 miner during each shift, 7 days per week, if applicable, 52 weeks per year.

One part 90 commenter stated that the CPDM would affect miners' performance, back, hips, legs and knees.

In response to the comment, MSHA has concluded that 24/7 continuous sampling of a part 90 miner using a CPDM may be too burdensome on a part 90 miner who is already suffering from decreased lung function. Therefore, final paragraph (a) includes the sampling frequency in proposed § 90.208(a) which would have required the operator to take five samples each calendar quarter when using the CMDPSU.

Because the proposed sampling frequency while using a CPDM could have affected a part 90 miner's performance, and back, hips, legs and/or knees, final paragraph (a) replaces the existing bimonthly sampling period with a quarterly sampling period and increases sampling from one to five samples collected on consecutive work days during a quarterly period. This is the same sampling frequency in proposed § 90.208(a) which would have required the operator to take five samples each calendar quarter when using the CMDPSU. Sampling part 90 miners during five consecutive work days on a quarterly basis provides a better representation of typical dust conditions to which a part 90 miner is exposed as compared to the existing bimonthly sampling period. Therefore, final paragraph (a) provides greater protection for miners than the existing standard. In addition, final paragraph (a) protects part 90 miners because the sampling results obtained during the quarterly sampling periods will provide mine operators with information to evaluate the dust controls specified in their approved ventilation plan and the maintenance of those controls. As long as dust controls are properly maintained to ensure continuing compliance with the respirable dust standard, part 90 miners will be protected from overexposures. This is particularly so because MSHA certifies that the part 90 miner is in an occupation that meets the respirable dust standard and cannot be moved to a different occupation unless certified by MSHA.

Final paragraph (b) is redesignated from and is similar to proposed §§ 90.208(b) and 90.209(b). Paragraph (b) clarifies the time frame for implementation when there is a change in the applicable standard. Paragraph (b) requires that when the respirable dust standard is changed in accordance with § 90.101, the new standard becomes effective 7 calendar days after the date of the notification of the change by MSHA. Under the proposal, a new standard would have gone into effect on the first shift after receipt of notification. MSHA did not receive comments on proposed §§ 90.208(b) or 90.209(b).

Final paragraph (b) is substantially similar to final §§ 70.206(c), 70.207(b), 70.208(c), 70.209(b) and 71.206(b), except for conforming changes. The rationale for paragraph (b) is discussed elsewhere in this preamble under final § 70.208(c).

Final paragraph (b) does not include the requirements in proposed § 90.208(b)(1) and (b)(2). Proposed § 90.208(b)(1) would have required that if all samples for the part 90 miner from the most recent quarterly sampling period do not exceed the new standard (reduced due to the presence of quartz), respirable dust sampling of the part 90 miner would begin on the first shift on which that miner is performing normal work duties during the next quarterly period following notification of the change. Proposed § 90.208(b)(2) would have required that if any sample from the most recent quarterly sampling period exceeds the new standard (reduced due to the presence of quartz), the operator must make necessary adjustments to the dust control parameters within three days and then collect samples from the affected part 90 miner on consecutive work days until five valid representative samples are collected. It further provided that the samples collected will be treated as normal quarterly samples under this part. MSHA did not receive any comments on the proposal.

MSHA's rationale for not including § 90.208(b)(1) and (b)(2) is discussed elsewhere in this preamble under final § 70.206(c)(1) and (2).

Final paragraph (c) is changed from the proposal. It requires that when a valid representative sample taken in accordance with this section meets or exceeds the ECV in Table 90–1 that corresponds to the applicable standard and particular sampling device used, the operator must: (1) Make approved respiratory equipment available; (2) Immediately take corrective action; and (3) Record the corrective actions. Paragraph (c) is similar to proposed § 90.208(e) and (g), regarding compliance sampling procedures for sampling with CMDPSUs, and § 90.209(e) and (f), regarding compliance sampling procedures for sampling with CPDMs. The actions required by final paragraph (c) are similar to those proposed.

Proposed § 90.208(e) would have applied to sampling with a CMDPSU and would have required that during the time for abatement fixed in a citation, the operator would have to: (1) Make approved respiratory equipment available, (2) submit proposed corrective actions to the District Manager, and either (i) implement the corrective actions after District Manager approval and conduct additional sampling, or (ii) transfer the part 90 miner to a work position meeting the standard and conduct additional sampling.

Proposed § 90.208(g) would have applied to sampling with a CMDPSU and would have required that when a valid sample exceeds the standard but is less than the applicable ECV in proposed Table 90–1, the operator would have to: (1) Make approved respiratory equipment available, (2) take corrective action, and (3) record the corrective action taken in the same manner as the records for hazardous conditions required by § 75.363.

Proposed § 90.209(e) would have applied to sampling with a CPDM and would have required that when a valid end-of-shift equivalent concentration meets or exceeds the applicable ECV, or a weekly accumulated exposure exceeds the weekly permissible accumulated exposure, the operator would have to: (1) Make approved respiratory equipment available, (2) implement corrective actions, (3) submit dust control measures to the District Manager for approval, (4) review and revise the CPDM Performance Plan, (5) record the excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363, and (6) sample any transferred part 90 miner.

Proposed § 90.209(f) would have applied to sampling with a CPDM and would have required that when a valid end-of-shift equivalent concentration exceeds the standard but is less than the applicable ECV, the operator would have to: (1) Make approved respiratory equipment available, (2) implement corrective actions, (3) record the excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363, and the corrective actions taken, and (4) review and revise the CPDM Performance Plan.

As noted previously in the discussion on final § 70.206(e), MSHA clarified, in the March 8, 2011, request for comments (76 FR 12650), that the proposal would require that operators record both excessive dust concentrations and corrective actions in the same manner as conditions are recorded under § 75.363 and that ''MSHA would not consider excessive dust concentrations to be hazardous conditions, since the proposed requirement is not a section 75.363 required record'' (76 FR 12650). MSHA did not receive any comments on the proposal.

Final paragraph (c) is changed from the proposal. It does not require action if the dust sample exceeds the standard but is less than the ECV in Table 90–1. Rather, it requires an operator to take certain actions when a respirable dust sample meets or exceeds the ECV in Table 90–1. Although the Secretary has determined that a single full-shift measurement of respirable coal mine dust accurately represents atmospheric conditions to which a miner is exposed during such shift, MSHA has concluded that a noncompliance determination based on a single full-shift sample will only be made on MSHA inspector samples. With respect to operator samples, MSHA reevaluated its enforcement strategy under the proposed rule. MSHA determined that the proposal would have resulted in little time for an operator to correct noncompliance determinations based on an operator's single sample. The final rule ensures that an operator takes corrective actions on a single overexposure. If sampling with a CMDPSU, the actions must be taken upon notification by MSHA that a respirable dust sample taken in accordance with this section meets or exceeds the ECV for the applicable standard. If sampling with a CPDM, the actions must be taken when the sampling measurement shows that a dust sample taken in accordance with this section meets or exceeds the ECV for the applicable standard.

Final paragraph (c)(1) is similar to proposed §§ 90.208(e)(1) and (g)(1) and 90.209(e)(1) and (f)(1). It requires that the operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Some commenters stated that a part 90 miner should not be required to wear a respirator and should be removed from the environment when any sample exceeds the respirable dust standard.

The combination of specific actions that an operator is required to take under the final rule, which includes making approved respiratory equipment available, immediately taking corrective action, and recording the corrective actions, provides immediate health protection to a part 90 miner. Additional discussion on the rationale for final paragraph (c)(1) can be found elsewhere in this preamble under final § 70.206(e)(1).

Final paragraph (c)(2) is similar to proposed §§ 90.208(e)(2)(i) and (g)(2) and 90.209(e)(2) and (f)(2). It requires that the operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard. Paragraph (c)(2) is consistent with existing § 90.201(d), which requires a mine operator to take corrective action to lower the concentration of respirable dust. Paragraph (c)(2) clarifies that corrective action needs to be taken immediately to protect miners from overexposures. MSHA did not receive any comments on the proposal. The rationale for final paragraph (c)(2) is the same as that for final § 70.206(e)(2) and is discussed in that section.

Final paragraph (c)(3) is similar to proposed §§ 90.208(g)(3) and 90.209(f)(3)(v). Final paragraph (c)(3) requires that the mine operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Final paragraph (c)(3) further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the part 90 miner. MSHA did not receive any comments on the proposal. The rationale for paragraph (c)(3) is the same as that for final § 70.206(e)(3) and is discussed in that section.

Final paragraph (c) does not include the provisions in proposed §§ 90.208(e)(2) and 90.209(e)(3) regarding the submission of corrective actions to the District Manager for approval. MSHA did not receive comments on the proposal. MSHA's rationale is discussed elsewhere in this preamble under final § 70.206(h)(4).

In addition, unlike proposed § 90.209(e)(4) and (f)(4), final paragraph (c) does not require operators to review and revise a CPDM Performance Plan. MSHA did not receive any comments on the proposal. As discussed elsewhere in this preamble under § 70.206, the final rule does not include the proposed requirements for a CPDM Performance Plan.

For consistency between the sampling requirements of the final rule, final paragraphs (c)(1)–(3) are identical to final § 70.206(e)(1)–(3) regarding bimonthly sampling of MMUs, § 70.207(d)(1)–(3) regarding bimonthly sampling of designated areas, § 70.208(e)(1)–(3) regarding quarterly sampling of MMUs, § 70.209(c)(1)–(3) regarding quarterly sampling of designated areas, and § 71.206(h)(1)–(3) regarding quarterly sampling, except for conforming changes. Under final paragraph (c)(3), the operator must make the corrective action record available for inspection to the part 90 miner and not to the representative of the miners, due to privacy considerations.

Final paragraph (d) is redesignated and changed from proposed §§ 90.208(c) and 90.209(c) and (d). It states that noncompliance with the standard is demonstrated during the sampling shift when: (1) Two or more valid representative samples meet or exceed the excessive concentration value (ECV) in Table 90–1 that corresponds to the applicable standard and the particular sampling device used; or (2) The average for all valid representative samples meets or exceeds the ECV in Table 90–2 that corresponds to the applicable standard and the particular sampling device used.

In the March 8, 2011, request for comments (76 FR 12649), MSHA stated that the Agency was interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the ECV. The Agency also requested comments on alternative actions, other than those contained in the proposal, for MSHA and the operator to take if operators use a CPDM. MSHA further stated that it was particularly interested in alternatives to those in the proposal and how such alternatives would be protective of miners.

Proposed §§ 90.208(c) and 90.209(c) would have required that no valid end-of-shift equivalent concentration meet or exceed the ECV that corresponds to the applicable standard in the respective Table 90–1 or 90–2. Proposed § 90.209(d) would have required that no weekly accumulated exposure exceed the weekly permissible accumulated exposure.

MSHA did not receive any comments on proposed §§ 90.208(c) or 90.209(c) and (d). The rationale for paragraphs (d)(1) and (2) is the same as that for final §§ 70.206(f)(1) and (2), 70.207(e)(1) and (2), 70.208(f)(1) and (2), 70.209(d)(1) and (2), and 71.206(i)(1) and (2), and is discussed elsewhere in this preamble under final § 70.208(f)(1) and (2).

For consistency between the sampling requirements of the final rule, final paragraphs (d)(1) and (2) are the same as, except for conforming changes, final §§ 70.206(f)(1) and (2), 70.207(e)(1) and (2), 70.208(f)(1) and (2), 70.209(d)(1) and (2), and 71.206(i)(1) and (2).

Comments on the ECVs in proposed Tables 90–1 and 90–2 are discussed elsewhere in this preamble under § 70.208(f). In addition, a detailed discussion on the derivation of the ECVs in both Tables 90–1 and 90–2 is included in Appendix A of the preamble. Final Table 90–1 revises one ECV when the CPDM is used from proposed Table 70–2 due to rounding inconsistencies; the final ECV is changed from proposed 0.80 mg/m^3 to 0.79 mg/m^3 when the applicable standard is 0.7 mg/m^3. This is consistent with the change to the ECV in final Table 70–1.

Final paragraph (e) is redesignated from proposed § 90.208(d) and makes clarifying and conforming changes. It provides that upon issuance of a citation for a violation of the standard, paragraph (a) of this section will not apply to that part 90 miner until the violation is abated and the citation is terminated in accordance with paragraphs (f) and (g) of this section. Paragraph (e) clarifies that a violation must be abated and the citation must be terminated before resuming quarterly sampling. Final paragraphs (f) and (g) are discussed below.

Final paragraph (e) includes an exception to allow the District Manager flexibility to address extenuating circumstances that would affect sampling. An example of extenuating circumstances would occur when an uncorrected violation would require abatement sampling that continues into the next sampling period.

Final paragraph (e) is similar to existing § 90.208(c). MSHA did not receive comments on the proposal.

For consistency between the sampling requirements of the final rule, except for conforming changes, final paragraph (e) is the same as final §§ 70.206(g), 70.207(f), 70.208(g), 70.209(e), and 71.206(j).

Final paragraph (f) is redesignated from proposed §§ 90.208(e) and 90.209(e). It requires that upon issuance of a citation for a violation of the standard, the operator must take the following actions sequentially: (1) Make approved respiratory equipment available, (2) immediately take corrective action, and (3) record the corrective action. The actions required by paragraph (f) are similar to those in proposed §§ 90.208(e)(1)–(2) and 90.209(e)(1)–(6) which are discussed in this preamble under final paragraph (c). In addition, paragraph (f) includes the term ''sequentially'' to ensure that corrective actions are taken in the order they are listed.

Final paragraph (f)(1), like proposed §§ 90.208(e)(1) and 90.209(e)(1), requires that the mine operator make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter. Comments on proposed §§ 90.208(e)(1) and 90.209(e)(1) are discussed under final paragraph (c). The rationale for final paragraph (f)(1) is the same as that for final § 70.206(e)(1), which is discussed elsewhere in this preamble.

Final paragraph (f)(2) is similar to proposed §§ 90.208(e)(2)(i) and (ii) and 90.209(e)(2) and (6). It requires that the operator immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard.

Paragraph (f)(2) is consistent with existing § 90.201(d), which requires a mine operator to take corrective action to lower the concentration of respirable dust. Paragraph (f)(2) clarifies that the corrective action must be taken immediately to protect miners from overexposures. The types of corrective actions that could be taken to reduce the respirable dust levels in the work position of the part 90 miner are discussed elsewhere in this preamble under § 70.206(e)(2) and could also include modifications to the part 90 miner's normal work duties. Final paragraph (f)(2)(i) makes a minor change to proposed paragraph (e)(2)(i). It replaces ''environment'' with ''position'' to clarify that respirable dust levels in the part 90 miner's specific work position must be reduced to meet the standard. Under final paragraph (f)(2)(ii), corrective action could also include transferring the part 90 miner to another work position. MSHA received no comments on the proposal. The rationale for final paragraph (f)(2) is the same as that for final § 70.206(e)(2) and (h)(2), which are discussed elsewhere in this preamble under § 70.206(e)(2) and (h)(2).

Final paragraph (f)(2) further provides that if the corrective action involves reducing the respirable dust levels in the work position of the part 90 miner identified in the citation, the operator must implement the proposed corrective actions and begin sampling the affected miner within 8 calendar days after the date the citation is issued until five valid representative samples are taken. If the corrective action involves transferring the part 90 miner to another work position at the mine to meet the standard, the operator must comply with § 90.102 and then sample the affected miner in accordance with § 90.206(a).

Final paragraph (f)(2)(i) clarifies that the operator must sample within 8 calendar days after the date the citation is issued. Proposed § 90.208(e)(2)(i) would have required sampling after corrective actions were approved by the District Manager and implemented. The final rule does not require the submission of corrective actions to the District Manager for approval. Final paragraph (f)(2)(ii) is the same as proposed §§ 90.208(e)(2)(ii) and 90.209(e)(6), except for conforming

changes. MSHA received no comments on the proposal.

Final paragraph (f)(3) is similar to proposed § 90.209(e)(5)(v). Final paragraph (f)(3) requires that the operator make a record of the corrective actions taken. The record must be certified by the mine foreman or equivalent mine official no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. It also requires that the record must be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Final paragraph (f)(3) further requires that the records must be retained at a surface location at the mine for at least 1 year and be made available for inspection by authorized representatives of the Secretary and the representative of miners. MSHA did not receive any comments on the proposal. The rationale for final paragraph (f)(3) is the same as that for final § 70.206(e)(3) and is discussed elsewhere in this preamble under final § 70.206(e)(3).

Final paragraph (f) does not include the provisions in proposed § 90.208(e)(2) regarding the submission of corrective actions to the District Manager for approval. MSHA received no comments on the proposal. MSHA's rationale for omitting this provision is discussed in this preamble under final § 70.206(h)(4).

In addition, unlike proposed § 90.209(e)(3), final paragraph (f) does not require operators to submit corrective actions to the District Manager pertaining to the part 90 dust control plan because the requirements are contained in final § 90.300 (Respirable dust control plan; filing requirements). MSHA received no comments on the proposal.

Unlike proposed § 90.209(e)(4), final paragraph (f) also does not require operators to review and revise a CPDM Performance Plan. MSHA did not receive any comments on the proposal. As discussed elsewhere in this preamble under § 70.206, the final rule does not include the proposed requirements for a CPDM Performance Plan.

For consistency between the sampling requirements of the final rule, except for conforming changes, paragraph (f) is the same as final § 70.206(h) regarding bimonthly sampling of MMUs, § 70.207(g) regarding bimonthly sampling of designated areas, § 70.208(h) regarding quarterly sampling of MMUs, § 70.209(f) regarding quarterly sampling of designated areas, and § 71.206(k) regarding quarterly sampling. Under final paragraph (f)(3), the operator must make available for inspection the corrective action record to the part 90 miner under § 90.207(c)(3), and not to the representative of the miners, due to privacy considerations.

Final paragraph (g) is similar to proposed § 90.208(f). It provides that a citation for a violation of the standard will be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is at or below the standard. The final rule does not include the proposed requirement that within 15 calendar days after receipt of the sampling results from MSHA indicating the concentration has been reduced to at or below the standard, the operator must submit to the District Manager for approval a proposed dust control plan for that part 90 miner or proposed changes to the approved dust control plan as prescribed in § 90.300. It also does not include the proposed requirement that the revised parameters reflect the control measures used to maintain the concentration of respirable dust to at or below the standard. The proposed requirements to submit a dust control plan with revised dust control measures for a part 90 miner are included in final § 90.300, which also requires a description of the specific control measures used to continuously maintain respirable dust concentration to at or below the standard. Therefore, these requirements are not included in final paragraph (f). MSHA did not receive any comments on the proposal.

15. Section 90.208 Respirable Dust Samples; Transmission by Operator

Final § 90.208 is similar to proposed § 90.210. Final § 90.208, like the proposal, revises existing § 90.209(a) and (c), and adds a new paragraph (f). It also redesignates, without change, existing § 90.209(b), (d) and (e) to paragraphs (b), (d), and (e), respectively, of this section.

Final § 90.208(a) is changed from the proposal. It requires the operator, if using a CMDPSU, to transmit within 24 hours after the end of the sampling shift all samples collected, including control filters, in containers provided by the manufacturer of the filter cassette to MSHA's Pittsburgh Respirable Dust Processing Laboratory, or to any other address designated by the District Manager. Final paragraph (a) clarifies that operators must include the control filters with the dust sample transmissions to the Respirable Dust Processing Laboratory. As explained in the preamble to the proposed rule, MSHA uses control filters to improve measurement accuracy by eliminating the effect of differences in pre- and post-exposure laboratory conditions, or changes introduced during storage and handling of the filter cassettes. Including control filters with the dust samples ensures that the appropriate control filter is associated with the appropriate sample filter.

Final § 90.208(b) is the same as proposed § 71.208(b).

Final § 90.208(c) is substantially the same as proposed § 90.208(c). It requires that a person certified in sampling must properly complete the dust data card that is provided by the manufacturer for each filter cassette. It further requires that the dust data card must have an identification number identical to that on the filter cassette used to take the sample and be submitted to MSHA with the sample. It also requires that each dust data card must be signed by the certified person who actually performed the examinations during the sampling shift and must include that person's MSHA Individual Identification Number (MIIN).

As an example, the certified person who performs the required examinations during the sampling shift is the individual responsible for signing the dust data card and verifying the proper flowrate, or noting on the back of the card that the proper flowrate was not maintained. Since the certified person who conducted the examination is most knowledgeable of the conditions surrounding the examination, final paragraph (c) requires that certified person sign the dust data card. In addition, the MIIN number requirement is consistent with MSHA's existing policy. Since July 1, 2008, MSHA has required that the certified person section of the dust data card include the MIIN, a unique identifier for the certified person, instead of the person's social security number. To ensure privacy and to comport with Federal requirements related to safeguarding personally identifiable information, MSHA has eliminated requirements to provide a social security number.

Finally, paragraph (c) provides that respirable dust samples with data cards not properly completed may be voided by MSHA. This is a change from the proposal. The proposal would have required that, regardless of how small the error, an improperly completed dust data card must be voided by MSHA. Final paragraph (c) allows MSHA flexibility in voiding an improperly completed dust data card. MSHA received no comments on this proposed provision.

Final § 90.208(d) and (e) are the same as proposed § 90.208(d) and (e) and are the same as existing § 90.209(d) and (e).

Final § 90.208(f) is changed from the proposal. It requires that, if using a CPDM, the person certified in sampling must validate, certify, and transmit electronically to MSHA within 24 hours after the end of the sampling shift all sample data file information collected and stored in the CPDM, including the sampling status conditions encountered when sampling each part 90 miner; and, not tamper with the CPDM or its components in any way before, during, or after it is used to fulfill the requirements of 30 CFR part 90, or alter any sample data files. It further requires that all CPDM data files transmitted electronically to MSHA must be maintained by the operator for a minimum of 12 months.

Final paragraph (f) includes the term ''person certified in sampling'' rather than ''designated mine official.'' This change makes paragraph (f) consistent with final paragraph (c). Final paragraph (f) also includes a clarification that CPDM data files are ''electronically'' transmitted to MSHA, unlike the physical transmission of samples collected with the CMDPSU. As a clarification to the proposal, final paragraph (f) does not require ''error data file information'' to be transmitted to MSHA. Rather, final paragraph (f) requires ''the sampling status conditions encountered when sampling'' to be transmitted to MSHA. The clarification ensures that conditions that may occur during the sampling shift (e.g., flowrate, temperature, humidity, tilt indicator, etc.) and that may affect sampling results are recorded and transmitted to MSHA. This change is also consistent with final § 70.210(f).

The requirement in final paragraph (f) that the certified person not tamper with the CPDM or alter any CPDM data files is new. It is consistent with the requirements for CMDPSUs, under existing § 90.209(b) and final § 90.208(b), which provide that an operator not open or tamper with the seal of any filter cassette, or alter the weight of any filter cassette before or after it is used to fulfill the requirements of 30 CFR part 90. It is also consistent with the requirement in 30 CFR 74.7(m) that a CPDM be designed to be tamper-resistant or equipped with an indicator that shows whether the measuring or reporting functions of the device have been tampered with or altered. MSHA has a long history of taking action against persons who have tampered with CMDPSUs or altered the sampling results obtained from such devices in order to protect miners' health and ensure the integrity of MSHA's dust program. Therefore, a similar requirement is included for samples taken with a CPDM.

MSHA received one comment on proposed § 90.210. The commenter expressed general support for the proposal and suggested that each operator be required to maintain CPDM data files for a minimum of 24 months, rather than for 12 months, as proposed. Further, the commenter suggested that the rule include a requirement that all CPDM data files be made available to all parties.

MSHA believes that a 12-month retention period is reasonable in light of other requirements in the final rule. Specifically, under final § 90.209(b), the part 90 miner will receive a copy of the MSHA report to the mine operator that provides a variety of data on the respirable dust samples that were collected from the affected miner. Also, under final § 90.209(c), when a CPDM is used to sample, the part 90 miner will receive a paper record of the sample run within 12 hours of the end of each sampling shift. Because these provisions of the final rule ensure that the affected part 90 miner has ongoing access to sampling data, there is no need to require a mine operator to retain CPDM data files for more than 12 months. Moreover, the final rule does not include the commenter's suggestion that CPDM data files be made available to all parties. Special consideration must be given to part 90 miners' sampling data due to personal privacy implications associated with sampling such miners. Making the sampling data of part 90 miners available to all parties would be inappropriate and would jeopardize part 90 miners' privacy rights.

Final § 90.208 and its rationale are identical to final § 70.210, discussed elsewhere in this preamble under § 70.210.

16. Section 90.209 Respirable Dust Samples; Report to Operator

Final § 90.209 is similar to proposed § 90.211. One commenter expressed general support for the proposal.

Paragraph (c) of final § 90.209 is essentially the same as the proposed rule except for conforming changes. Final § 90.209(a)(1)–(a)(6), and (c)(1)–(c)(5) are identical to final § 70.211(a)(1)–(a)(6), and (c)(1)–(c)(5), and the rationale is the same as that discussed elsewhere in this preamble related to final § 70.211.

Final paragraph (c) requires that if using a CPDM, the person certified in sampling must print, sign, and provide to each part 90 miner, a paper record (Dust Data Card) of the sample run within one hour after the start of the part 90 miner's next work shift.

Three provisions of final § 90.209 are unique to part 90 and are not included in final § 70.211. First, final paragraph (a)(7), like the proposal, provides that MSHA's report will contain the part 90 miner's MSHA Individual Identification Number (MIIN) instead of a social security number. To ensure privacy and to comport with Federal requirements related to safeguarding personally-identifiable information, MSHA has eliminated the use of social security numbers on its document.

Second, final § 90.209(b), like the proposed rule, requires that upon receipt of the MSHA report provided to the operator under final § 90.209(a), the operator must provide a copy of this report to the part 90 miner. It also prohibits the operator from posting on the mine bulletin board the original or a copy of the MSHA report. Final paragraph (b) is identical to existing § 90.210(b).

Third, final § 90.209(d), like the proposal, does not allow the operator to post data on respirable dust samples for part 90 miners on the mine bulletin board. No specific comments were received on these three provisions and they are finalized as proposed.

17. Section 90.210 Status Change Reports

Final § 90.210 is similar to proposed § 90.212 and existing § 90.220. One commenter expressed general support for the proposal.

Final § 90.210, like proposed § 90.212(a), provides an operator the option of reporting to MSHA changes in the status of a part 90 miner electronically instead of in writing. MSHA received no comment on this provision and it is finalized as proposed.

Unlike proposed § 90.212(b), final § 90.210 does not require the designated mine official to report status changes affecting the operational readiness of any CPDM within 24 hours after the status change occurred. MSHA received no comment on this provision. The rationale for not including proposed § 90.212(b) in the final rule is the same as the rationale for not including proposed § 70.212(c) in the final rule, which is discussed in the preamble related to final § 70.212.

18. Section 90.300 Respirable Dust Control Plan; Filing Requirements

Final § 90.300 is derived from existing § 90.300 and addresses requirements for operators to file a respirable dust control plan for a part 90 miner.

Final § 90.300(a) requires that if an operator abates a violation of the standard by reducing the respirable dust

level in the work position of the part 90 miner, the operator must submit to the District Manager for approval a written respirable dust control plan for the part 90 miner in the work position identified in the citation within 15 calendar days after the citation is terminated. It further requires that the respirable dust control plan and any revisions must be suitable to the conditions and the mining system of the coal mine and be adequate to continuously maintain respirable dust to at or below the standard for that part 90 miner.

Final paragraph (a) does not include the proposal's references to §§ 90.208(f) and 90.209(e)(3) because they were confusing and duplicative of final § 90.300 requirements. Instead, final paragraph (a) is consistent with existing § 90.300(a) regarding when a respirable dust control plan is required. It also establishes the same 15 calendar-day time period requirement for plan submission for operators using a CMDPSU or a CPDM.

One commenter, who generally supported the proposal, suggested that the plan be made available to the miners' representative.

To prevent the disclosure of the part 90 miner's identity and ensure the miner's privacy, the final rule does not include the commenter's suggestion.

Final § 90.300(b), like the proposal, specifies the required content of each part 90 miner respirable dust control plan. Final paragraph (b)(1) requires that the plan include the mine identification number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number, and the name, address, and telephone number of the principal officer in charge of health and safety at the mine. Final paragraph (b)(2) requires that the plan include the name and MSHA Individual Identification Number of the part 90 miner and the position at the mine to which the plan applies. Final paragraph (b)(3) requires that the plan contain a detailed description of the specific respirable dust control measures used to continuously maintain concentrations of respirable coal mine dust at or below the standard. Final paragraph (b)(4) requires that the plan include a detailed description of how each of the respirable dust control measures described in final paragraph (b)(3) will continue to be used by the operator, including at least the specific time, place, and manner the control measures will be used. Except for minor changes, final paragraphs (b)(1)–(4) are substantially the same as existing § 90.300(b)(1)–(4). MSHA did not receive comments on proposed paragraphs (b)(1)–(b)(4) and they are finalized as proposed.

19. Section 90.301 Respirable Dust Control Plan; Approval by District Manager; Copy to Part 90 Miner

Final § 90.301, like the proposal, addresses the criteria that MSHA will use to approve the respirable dust control plan for each part 90 miner, and requires operators' compliance with all provisions of the approved plan. Final § 90.301(a) through (c) and (e) are identical to final § 71.301(a) through (c) and (e), discussed elsewhere in this preamble.

Final § 90.301(d), like the proposal, requires the operator to provide a copy of the current respirable dust control plan to the affected part 90 miner and prohibits the operator from posting the original or a copy of the plan on the mine bulletin board.

One commenter, who generally supported the proposal, suggested that the plan be made available to the miners' representative. Final § 90.301 does not include the commenter's suggestion for the same reason it is not included in final § 90.300, which is discussed elsewhere in this preamble under final § 90.300(a). MSHA did not receive other comments on § 90.301 and it is finalized as proposed.

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

Executive Orders (E.O.) 12866 and 13563 direct regulatory agencies to assess all costs and benefits of regulations and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. To comply with the provisions of E.O. 12866 and 13563, MSHA has prepared a Regulatory Economic Analysis (REA) for this final rule. The REA contains supporting data and explanations for the summary presented in this preamble section, including the types of mines covered by the final rule, the costs and benefits of the final rule, the economic feasibility of the final rule, the impact of the final rule on small businesses, and the paperwork burden of the final rule on the affected sectors of the mining industry. The REA can be accessed electronically at *http://www.msha.gov/rea.htm* or *http://www.regulations.gov*. A copy of the REA can be obtained from MSHA by request to Sheila McConnell at *mcconnell.sheila.a@dol.gov*, by phone request to 202–693–9440, or by facsimile to 202–693–9441.

Under E.O. 12866, MSHA must determine whether a regulatory action is ''significant'' and subject to review by the Office of Management and Budget (OMB). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety or state local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

MSHA has determined that the final rule may have an effect of $100 million or more on the economy in at least one year, and is therefore an ''economically significant'' regulatory action in accordance with § 3(f) of E.O. 12866 and is subject to OMB review.

A. Population at Risk

The final rule applies to all underground coal mines, surface coal mines, and surface areas of underground coal mines in the United States. For the 12 months ending January 2010, there were an average of 424 active underground coal mines employing approximately 47,000 miners and contractors (excluding office workers) and 1,123 active surface coal mines employing approximately 56,000 miners and contractors (excluding office workers).

B. Benefits

The final rule significantly improves health protections for coal miners by reducing their occupational exposure to respirable coal mine dust and lowering the risk that they will suffer material impairment of health or functional capacity over their working lives. The primary benefit of the final rule is the reduction of ''black lung'' disease among coal miners by improving MSHA's existing standards for respirable coal mine dust, thereby reducing miners' exposure to respirable

coal mine dust. Chronic exposure to respirable coal mine dust causes lung diseases including coal workers' pneumoconiosis (CWP), emphysema, silicosis, and chronic bronchitis, known collectively as ''black lung.'' These diseases are debilitating and can result in disability and premature death.

The REA benefits chapter provides a detailed description of how MSHA used the estimated risk reduction in the QRA for the final rule to calculate benefits. For the proposed rule, MSHA based its estimate of the benefits on the QRA for the proposed rule, which focused on the effects of the proposed lowering of the standard to 1.0 mg/m^3 for most miners (0.5 mg/m^3 for part 90 miners) and the proposed use of single shift samples to determine noncompliance.

The final rule lowers the existing 2.0 mg/m^3 standard to 1.5 mg/m^3, rather than to the 1.0 mg/m^3 standard in the proposed rule. The QRA for the final rule uses the same methodology that was used in the QRA for the proposed rule but with the final standard.

As in the QRA for the proposed rule, MSHA's QRA for the final rule compares the risks for two hypothetical cohorts of miners with the same occupation/coal rank. One cohort, designed to characterize risks to the current workforce, was assigned 45-year lifetime exposures based on current sampling data. The comparison cohort was assigned 45-year lifetime exposures designed to represent risks associated with two provisions of the final rule (i.e., lowering the existing standard from 2.0 mg/m^3 to 1.5 mg/m^3, and basing noncompliance determinations on a single MSHA inspector sample rather than the average of 5 samples under the existing dust standard). Since the two cohorts compared are independent, there are two caveats: (1) No benefits were projected for delaying or stopping the progression of disease among the population that has experienced respirable coal mine dust exposures during their working lifetime; and (2) due to the latency between exposure and disease, especially for severe emphysema, a large portion of the benefits estimated by this analysis are not expected to accrue for many years.

Using this analysis, MSHA estimates that the two provisions of the final rule considered in the QRA (i.e., lowering the standard from 2.0 mg/m^3 to 1.5 mg/m^3, and basing determinations of noncompliance on single inspector samples rather than the average of 5 samples) will result in the prevention of the adverse health effects shown in Table V–1.

TABLE V–1—ESTIMATED NUMBER OF ADVERSE HEALTH EFFECTS PREVENTED, AS OF AGE 73, 45-YEAR WORKING LIFETIME, TWO PROVISIONS OF THE FINAL RULE

[Lowering the standard from 2.0 mg/m^3 to 1.5 mg/m^3 and basing determinations of noncompliance on single inspector samples]

	CWP 1+	CWP 2+	PMF	Severe emphysema	Deaths from NMRD
Number of Cases Prevented Over a 45-Year Work Life	593	473	319	248	26

For the proposed rule, MSHA assumed additional reductions in adverse health effects from converting respirable coal mine dust samples to an equivalent 8-hour concentration for work shifts longer than eight hours, and from the final definition of normal production shift. After considering comments and relevant data, MSHA is no longer requiring adjustments for shifts longer than 8 hours in the final rule; therefore, the reductions in adverse health effects associated with this provision are no longer assumed.

MSHA continues to assume additional reductions in cases of CWP, PMF, severe emphysema, and NMRD from the revised definition of normal production shift. If the requirement for the revised definition of normal production shift had been in effect in 2009, the amount of dust on the samples would have been higher due the higher levels of production during sampling. Lowering respirable coal mine dust exposures from these higher levels to the levels in the final rule will result in additional benefits beyond those associated with the recorded sampling results. MSHA used additional data from the feasibility assessment to extrapolate the further impact of this provision.

TABLE V–2—ESTIMATED NUMBER OF ADVERSE HEALTH EFFECTS PREVENTED, AS OF AGE 73, 45-YEAR WORKING LIFETIME, THREE PROVISIONS OF THE FINAL RULE

[Lowering the standard from 2.0 mg/m^3 to 1.5 mg/m^3, basing noncompliance on a single inspector sample and the revised definition of normal production shift]

	CWP 1+	CWP 2+	PMF	Severe emphysema	Deaths from NMRD
Number of Cases Prevented Over a 45-Year Work Life	869	655	433	374	65

MSHA also projects that the final rule will result in additional reductions in cases of other adverse health effects beyond those being quantified even after making the adjustment for the revised definition of normal production. While MSHA did not quantify the benefits associated with full-shift sampling as well as several other provisions of the final rule, MSHA believes that these provisions will significantly reduce coal mine dust exposures and reduce the incidences of disease.

To estimate the monetary values of the reductions in cases of CWP 1+, CWP 2+, PMF, severe emphysema, and deaths from non-malignant respiratory disease (NMRD) for the proposed rule, MSHA analyzed the imputed value of illnesses and fatalities avoided based on a willingness-to-pay approach. In the final rule, MSHA continues to use the willingness-to-pay approach to estimate the Agency's preferred dollar values of disease and death. However, in the final rule, MSHA estimated benefits using a range of disease values. These values and the resulting benefit estimates are discussed more fully in Chapter V of the REA.

The total undiscounted benefits are between $2.9 billion and $4.1 billion. However, using the Agency's preferred dollar values for disease, total undiscounted benefits are $3.4 billion

over a 65-year period. The total net benefit at 65 years, with a 3 percent discount rate, is $344.0 million, and the annualized net benefit is $12.1 million. At a 7 percent discount rate, the total net benefit is −$114.7 million and the annualized net benefit is −$8.1 million.

For the proposed rule, MSHA monetized the reduction in the number of deaths from NMRD using a study by Viscusi and Aldy (2003). MSHA retained this approach for the final rule. Viscusi and Aldy (2003) conducted an analysis of studies that use a willingness-to-pay approach to estimate the imputed value of life-saving programs (i.e., meta-analysis) and found that each fatality avoided was valued at approximately $7 million. Using the GDP Deflator (U.S. Bureau of Economic Analysis, 2010), the inflation-adjusted estimates are $8.7 million for each fatality avoided in 2010 dollars. This value of a statistical life (VSL) estimate is within the range of the majority of estimates in the literature ($1 million to $10 million per statistical life), as discussed in OMB Circular A–4 (OMB, 2003).

MSHA emphasizes that, although VSL is a useful statistical concept for monetizing benefits, it does not represent the value of a life. Rather, it represents a measurement related to risk reduction so that various options can be compared.

Coal Workers' Pneumoconiosis (CWP) is an occupational lung disease typically not incurred by the general population. When coal dust particles enter the lungs, they irritate the delicate lung tissue and eventually form massive impenetrable fibrous tissue that significantly restricts the lung's functions and causes scarring, which can lead to lung failure and death. Once CWP develops, it cannot be reversed and, in many cases, the condition will get progressively worse even after exposure of the harmful coal dust has stopped. In this way, or through continued exposure, CWP can progress to total disability in the form of PMF and severe emphysema and can cause premature death.

Valuation of Avoided Cases of CWP 1+ and CWP 2+

Research has shown that lung-function decreases and the degree of impairment increases with the transition from CWP 1+ to CWP 2+. NIOSH defines impairment of lung function as a forced expiratory volume (FEV_1) less than 80 percent of predicted normal values. Miners with simple pneumoconiosis (CWP 1+ and CWP 2+) or chronic bronchitis exhibit an FEV_1 of 80 percent or less of predicted normal values. For the proposed rule, MSHA monetized the reduction in cases of CWP 1+ and CWP 2+ using the study by Viscusi and Aldy (2003) that valued each lost work-day injury at approximately $50,000 in 2000 dollars. Using the GDP deflator, the inflation-adjusted estimate was $62,000 for each injury avoided in 2010 dollars.

In the final rule, MSHA's preferred dollar value for avoiding a case of CWP 1+ continues to be based on the Viscusi and Aldy (2003) lost-time injury willingness-to-pay estimate used in the proposed rule. MSHA's preferred value for avoiding a case of CWP 2+ is $431,000. The value for CWP 2+ is based on an Environmental Protection Agency (EPA) final rule that estimated an avoided case of chronic bronchitis at $410,000 in 2007 dollars (U.S. Environmental Protection Agency, Office of Air and Radiation, 2011). MSHA revised the Agency's preferred dollar values for CWP 2+ after reviewing literature, considering EPA's assumption that the cases due to environmental causes were less severe than occupational sources, and determining that CWP 2+ and chronic bronchitis are similar. These diseases are similar in that, at early stages, they cause minimal damage to lung tissue, and if further exposure is prevented, progression to more serious forms of disease may be avoided. Like chronic bronchitis, CWP 2+, while a material impairment of health, is not disabling.

Valuation of Progressive Massive Fibrosis (PMF) and Severe Emphysema

As noted in the QRA, miners with PMF qualify as being presumptively totally disabled under the Department of Labor criteria in 20 CFR 718.304(a). The Social Security Administration (SSA) also recognizes PMF as a presumptively disabling condition (*http://www.ssa.gov*). Miners with PMF are unable to work.

PMF is identified on chest x-rays by large lesions (nodular masses) greater than 1 cm in diameter and often multiple and bilateral, represent coalescence of smaller nodules. Disability is caused by destruction of lung tissue that is incorporated into the nodules (Rubin's Pathology, 2011). As PMF worsens, adjacent lung tissue retracts towards the lesions, typically in the upper airways. Alveoli and blood vessels are destroyed and airways become distorted and inflexible as lung function is lost (Wade, 2011). PMF causes a mixed obstructive and restrictive lung function pattern. Distortion of the airways results in irreversible obstructive changes; the large masses of fibrous tissue reduce the useful volume of the lung. Abnormally low concentration of oxygen in the blood (hypoxemia), pulmonary heart disease (cor pulmonale), and terminal respiratory failure may occur in persons with PMF (Lyons and Campbell, 1981; Attfield and Wagner, 1992; Miller and Jacobsen, 1985; West, 2011). The NIOSH Respiratory Disease Research Program documented that PMF is a disabling and life-threatening condition (NIOSH, 2007; Castranova and Vallyathan, 2000). PMF is progressive, totally disabling, and incurable, and causes premature death.

Severe emphysema also is progressive, disabling, and incurable, and causes premature death (*http://www.nhlbi.nih.gov, http://www.ssa.gov*). The QRA characterizes severe emphysema as a disabling loss of respiratory function. Miners with severe emphysema are unable to work. NIOSH defines a severe and disabling decrement in lung function as a FEV_1 of less than 65 percent of expected normal values. A person with severe emphysema will have a lung function, as measured by FEV_1 numbers for severe emphysema reveal between 49 and 30 percent of normal lung function (FEV_1/FVC <49–30 percent).

According to the National Heart, Lung, and Blood Institute, HHS (*http://www.nhlbi.nih.gov*), although emphysema develops slowly, a person's symptoms often worsen over time and can impair the ability to perform any normal daily activity. Flare-ups (exacerbations) from the disease become more frequent. These flare-ups can become increasingly serious, even deadly, with FEV_1 numbers during these episodes revealing less than 30 percent of normal lung function (FEV_1/FVC <30 percent). Respiratory failure can occur, which may also lead to effects on the heart such as right heart failure (cor pulmonale).

For the final rule, MSHA reviewed the work of Magat, Viscusi and Huber (1996), which measured willingness-to-pay values for reducing the probability of contracting nerve disease (peripheral neuropathy) and two forms of lymphoma (cancer of the lymph system). This study found that the median amount persons would be willing to pay to avoid nerve disease was 40 percent of what they would pay to avoid death in a car crash, and was 58.3 percent to avoid non-fatal lymphoma.

MSHA also reviewed the work of Viscusi, Magat, and Huber (1991). This earlier study laid the groundwork for the methodology used in Magat et al. (1996). Viscusi et al. (1991) measured a willingness-to-pay value for reducing

the probability of contracting chronic bronchitis. The study found that the median amount persons would be willing to pay to avoid chronic bronchitis was 32 percent of what they would pay to avoid death in a car crash, although it found that the mean (average) amount was 68 percent.

In developing the estimates for the final rule, MSHA used both Viscusi et al. 1991 and Magat et al. 1996, although MSHA believes that the willingness-to-pay values in the Magat et al. 1996 study are more closely related to those for PMF and severe emphysema. MSHA reevaluated the diseases in the Magat et al. (1996) study and determined that peripheral neuropathy (nerve disease) is a disabling disease like PMF and severe emphysema and causes a more comparable degree of disability than curable lymphoma.

The health consequences of nerve disease as described in this study include, among other things, weakness, inability to move, constant pain, depression, inability to work. Nerve disease also is incurable. These health consequences of nerve disease, as described, are similar to the health effects of PMF and severe emphysema discussed above. One difference is that the end point of PMF and severe emphysema is the probability of premature death; the authors stated that nerve disease ''is nonfatal in most cases.'' For this reason, it is possible that subjects may be willing to pay more to avoid PMF and severe emphysema than to avoid nerve disease.

Viscusi et al. (1991), on the other hand, measured a willingness-to-pay value for reducing the probability of contracting chronic bronchitis. Although chronic bronchitis is a respiratory disease, it is a fundamentally different disease than PMF or severe emphysema in terms of health effects. Generally, chronic bronchitis does not progress if exposure is halted. The health implications listed by Viscusi et al. (1991), while serious, are not totally disabling. Early diagnosis and treatment can improve a person's quality of life (*http://www.nhlbi.nih.gov*). Chronic bronchitis may or may not cause airway obstruction such as scarring or destruction of lung tissue. The health implications of chronic bronchitis identified by Viscusi et al. (1991) also did not include premature death, a well-known outcome of PMF and severe emphysema. For these reasons MSHA concluded that the symptoms expressed in Magat et al. (1996) are more comparable to the disabling consequences and long-term health effects of PMF and severe emphysema.

However, both studies are methodologically imperfect. The authors in Viscusi et al. 1991 stated that due to the need for further research into the potential biases of their method, ''much further research is needed before applying the methodology to give estimates precise enough to be used in regulatory analyses.'' Specifically, the authors identified that sensitivity analyses was needed to determine the degree of familiarity persons must have with the health benefit being valued. The authors in Magat et al. 1996 stated that their methodology was limited and only valued one form of nerve disease and two forms of lymphoma. The authors stated that ''specific results for nerve disease and lymphoma cannot be directly used for the valuation of other diseases.'' Moreover, although they described their 1991 study as ''elicit[ing] values for avoiding short term health risks'', their 1991 study described itself as focusing on ''the most severe chronic morbidity effects of chronic bronchitis''.

MSHA evaluated both studies and for its benefit calculation and concluded that the value of avoiding PMF and severe emphysema is in a range between 32 percent of VSL (Viscusi et al. 1991) and 40 percent of VSL (Magat et al. 1996); thus, MSHA chose (36 percent), the average of the two, for the Agency's preferred value for PMF and severe emphysema. Using this approach, the value for avoiding a case of PMF or severe emphysema is $3.15 million (36.0 percent of $8.7 million) for a total estimated value of $2.5 billion. This is an appropriate approach in estimating the value of avoiding PMF and severe emphysema given the methodological limitations of both studies.

MSHA monetized the total benefit estimates by multiplying the number of adverse health effects in Tables V–1 and V–2 by the monetized value of each adverse health effect. For example, MSHA estimates a benefit of $221.5 million (as of age 73, 45-year working lifetime) for avoided deaths based on: (1) Reducing the respirable dust standard; and (2) basing determinations of noncompliance on single MSHA inspector samples. MSHA multiplied the 25.5 deaths from NMRD (the estimates in Tables V–1 and V–2 were rounded to the nearest whole number) by the $8.7 million per death prevented. Based on this analysis, MSHA projects that an estimated $2.2 billion in adverse health effects will be prevented as of age 73 (45-year working lifetime) due to reducing the respirable coal mine dust standards and basing determinations of noncompliance on single MSHA inspector samples. MSHA also projects that the final rule will result in an estimated $3.4 billion in adverse health effects prevented as of age 73 (45-year working lifetime) due to these two requirements plus the revised definition of normal production shift. The net benefits and benefits sections of the REA include additional details to explain the final steps in the benefit calculation.

In the preamble to the proposed rule, MSHA noted several limitations of the benefits analysis in the Preliminary Regulatory Economic Analysis (PREA). The benefits analysis in the PREA was based on the QRA for the proposed rule. As a result of comments received on the QRA for the proposed rule and discussed in Section III.B. of this preamble, MSHA revised the QRA for the final rule as follows:

- The QRA for the proposed rule did not account for uncertainties related to sampling error or the assumption that single-shift exposures currently above the proposed limits of 1.0 mg/m^3 (or 0.5 mg/m^3 for part 90 miners) would be reduced no further than necessary to achieve compliance with the proposed limits on each shift. MSHA's QRA for the final rule contains an analysis of uncertainty with respect to sampling error and a sensitivity analysis of MSHA's exposure estimates.
- MSHA's QRA for the proposed rule did not account for measures that operators may take to avoid having exposures on any shift exceed the proposed standard. The QRA for the final rule uses expected reduction factors to project the impact that the final rule will have on exposures at or below 1.5 mg/m^3, or 0.5 mg/m^3 for part 90 miners.

Some limitations in the benefits analysis in the REA may result in underestimating the benefits for the final rule.

- MSHA does not have data or quantitative models to quantify the benefits associated with several provisions of the final rule (e.g., full-shift sampling, quarterly sampling of designated occupations (DOs), other designated occupations (ODOs), and part 90 miners using the CPDM; periodic medical surveillance examinations; and extending the part 90 option to surface coal miners). The Agency expects that these provisions will reduce the respirable dust levels and further protect miners from the debilitating effects of occupational respiratory disease. If the required data and quantitative models were available, MSHA believes that the combined effect of these provisions, particularly the requirements for full-shift sampling, and requiring more frequent sampling of

selected occupations and locations using the CPDM in underground coal mines would produce risk reductions beyond those projected in Table 28 of the QRA as well as an increase in the quantified benefits reported in the REA.

- As shown in Table 28 of the QRA for the final rule, since MSHA does not have data on the smoking status of the mining population specific to occupation and work location, the Agency assumed that all miners were non-smokers when calculating the number of cases of severe emphysema that would be reduced. Overall, Kuempel et al. (2009a) established that exposure to coal mine dust can produce clinically important levels of emphysema in coal miners regardless of smoking status. Furthermore, Attfield and Seixas (1995) tested the effects of smoking and CWP incidence and found that smoking contributed substantially less to the incidence of disease than age.
- In the REA, MSHA estimated the number of adverse health effects prevented by multiplying the estimated risk reductions presented in Table 28 of the QRA for the final rule by the current number of coal miners in each occupation estimated to be directly involved in or in the vicinity of operations that generate respirable coal mine dust. However, because MSHA does not have the racial composition of the mining population specific to occupation and work location, the Agency applied the risk factor for whites to all miners when calculating the number of cases of severe emphysema that would be prevented. Results are summarized in Table V–2 of the REA. On average, benefits would be underestimated for non-whites because the reduction in excess risk for non-whites is greater than that for whites for 17 of the 19 underground occupations, part 90 miners, and 11 of the 14 surface occupations (See Table 28 of the QRA).

On the other hand, in both the PREA and the REA, MSHA assumed a 45-year working life which may yield larger estimates of the number of cases of pneumoconiosis and possibly overestimate the benefits for the final rule. MSHA's longstanding practice to use a 45-year working life assumption for health standards is not based on empirical data that most miners are exposed to respirable coal mine dust for 45 years. Rather, it is based on the Mine Act's statutory directive that no miner suffer material impairment of health or functional capacity even if such miner is exposed to the hazard for the period of his or her working life. To the extent that miners' careers are shorter than 45 years, the actual benefits may be lower. In order to compare the estimate of benefits with the estimate of costs, it is necessary to project the timing of the benefits. Risk assessments in the occupational environment are generally designed to estimate the risk of an occupationally related illness over the course of an individual worker's lifetime. The estimate of benefits is calculated by comparing the number of cases at the current occupational exposure level of 2.0 mg/m^3 to the projected number of cases at the final dust level of 1.5 mg/m^3. Current respirable coal mine dust occupational exposure estimates were constructed from samples collected during the 2008 fiscal year. The number of projected cases anticipated under compliance with the final dust standard was estimated by reducing any 2008 fiscal year dust samples that were reported above the final dust standard to 1.5 mg/m^3. In order to annualize the benefits for the period of time after the final rule takes effect, it is necessary to create a timeline of benefits for an entire active workforce over that period.

While there are various approaches that could be used for modeling the workforce, there are two extremes. At one extreme, one could assume that none of the benefits occur until after the current workforce retires. Under this approach, workers with minimal cumulative exposure (both in terms of years of exposure and levels of exposure) would be assumed not to benefit from the revised standard. At the other extreme, one could assume that the benefits occur immediately. However, based on the various risk models, which reflect real-world experience with development of disease over an extended period of time, neither extreme is appropriate. MSHA estimated net benefits based on a 45-year working lifetime as used in the QRA for the proposed and final rule.

In the proposed rule, MSHA estimated the timeline for benefits in two different ways. First, benefits would begin immediately and annual benefits equal lifetime benefits divided by 45 years; benefits would begin to accrue in the first year after the provisions are put into effect. Second, no benefits would occur for the first 10 years and the annualized benefit for each of the next 35 years would be equal to the projected benefits divided by 35 years. MSHA preferred the second estimation method. In both methods under the proposed rule, MSHA estimated that it would take 45 years to reach the benefits calculated for the 45-year working lifetime.

For the final rule, net benefits are based on a single probability distribution (Poisson distribution with mean of 20 years) that represents the combined effects of worker turnover, disease progression, and uncertainty. The use of a single probability distribution to model the combined effects of employee turnover and the progression of disease and morbidity creates a smooth benefit stream rather than a discontinuous stream such as the one used for the proposed rule, where annual benefits abruptly jumped from zero to 1/35th of the total benefits in year 11. Under this approach, it would take 65 years to reach the benefits calculated for the 45 year working lifetime.

C. Compliance Costs

This section presents a summary of MSHA's estimate of costs that will be incurred by operators of underground coal mines and surface coal mines to comply with the final rule. These costs are based on MSHA's assessment of the most likely actions that would be necessary to comply with the final rule. Detailed analysis is provided in the cost chapter (Chapter 4) of the REA. Several different discounting streams are also presented in the net benefits chapter (Chapter 3).

MSHA estimates that the first year cost of the final rule will be $61 million and the annualized cost of the final rule at a 7 percent discount rate will be $28.1 million.

The estimated first year cost of the final rule for underground coal mine operators will be $52.7 million. Costs associated with the final requirement to use CPDMs ($34.1 million) and upgrading and maintaining engineering controls and work practices ($10.7 million) represent the most significant estimated first year costs for underground coal operators.

The first year cost of the final rule for surface coal mine operators will be $8.3 million. The part 90 option represents the most significant estimated first year cost for surface operators ($3.9 million).

MSHA estimates that, at a 7% discount rate, the annualized cost of the final rule for underground coal mine operators will be $26.2 million. Costs associated with the use of CPDMs ($14.6 million) and upgrading and maintaining engineering controls and work practices ($5.1 million) represent the most significant estimated annualized costs for underground coal operators.

MSHA estimates that the annualized cost of the rule for surface coal operators will be $4.0 million. Costs associated with the use of CMDPSUs (gravimetric samplers) ($1.1 million) and the extension of the part 90 option ($1.1 million) represent the most significant annualized estimated costs for surface coal miners.

D. Net Benefits

Net benefits are benefits minus costs. The long period to reach full benefits requires consideration of inter-generational impacts with discount rates such as 3 percent. MSHA estimates that the net benefits of the final rule are positive, with annualized net benefits of $12.1 million at a discount rate of 3 percent, and negative with annualized net benefits of −$8.1 million at a discount rate of 7 percent. Under the Mine Act, MSHA is not required to use estimates of net benefits as the basis for its regulatory decisions. The net benefits at both the 3 and 7 percent discount rates do not include the benefits associated with sampling over a full-shift using the CPDM as well as several other provisions (e.g. quarterly sampling of designated occupations, other designated occupations, and part 90 miners using the CPDM; periodic medical surveillance examinations; and extending the part 90 option to surface coal miners) of the final rule. These provisions, although not quantified, will significantly reduce coal mine dust exposures and the incidences of other lung disease, and significantly increase benefits. Congress realized that there ''is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines.'' 30 U.S.C. 801(c). In promulgating mandatory standards dealing with toxic materials or harmful physical agents, Section 101(a)(1)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)) requires MSHA to set standards ''which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health . . . even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.'' It further requires that to attain the highest degree of health and safety protection for the miner, other considerations in setting such standards shall be ''the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' In adopting the language of Section 101(a)(6)(A), the Senate Committee on Human Resources emphasized that ''it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law intended to insure.'' S. Rep. No. 95–181, 95th Cong. 1st Sess. 21 (1977).

VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

In accordance with the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the compliance cost impact of the final rule on small entities. Based on that analysis, MSHA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The factual basis for this certification is presented in full in Chapter VI of the REA and in summary form below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration's (SBA's) definition of a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternative definition and is required to use SBA's definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees. There are 412 underground mines and 1,119 surface mines that meet the SBA definition.

MSHA has also examined the impact of the final rule on mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as ''small mines.'' There are 81 underground mines and 620 surface mines that meet this criterion as a small mine. These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA's rules and the impact of the agency's rules on them will also tend to be different. This analysis complies with the requirements of the RFA for an analysis of the impact on ''small entities'' while continuing MSHA's traditional definition of ''small mines.''

B. Factual Basis for Certification

MSHA's analysis of the economic impact on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated costs of the final rule for small entities to the estimated revenues. When estimated costs are less than one percent of estimated revenues (for the size categories considered), MSHA believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. If estimated costs are equal to or exceed one percent of revenues, MSHA investigates whether further analysis is required.

Estimated revenue for underground and surface coal mines is derived from data on coal prices and tonnage. The 2010 price of coal was $60.73 per ton for underground coal and $24.13 per ton for surface coal.[63]

Throughout the economic analysis, MSHA used 2009 mine production to remain consistent with the data used in the QRA for the final rule and the output of the QRA used for the analysis of the benefits in the REA. In addition, 2010 coal pricing was used to be consistent with wage rates and costs used in the cost analysis. Overall coal production tonnage did not vary significantly from 2009 to 2010.

For underground coal mines with 1–19 employees, coal production in 2009 was approximately 5.036 million tons. Multiplying the tonnage from these small mines by the $60.73 price per ton in 2010 results in estimated revenues of $305.8 million. The annualized cost of the final rule, including penalty payments, for these mines is approximately $1.5 million. Dividing estimated costs for the final rule by estimated revenues results in 0.5 percent of annual revenues. The average compliance cost for an underground mine with 1–19 employees is $18,450 ($1.5 million divided by 81 mines).

For underground coal mines with 1–500 employees, coal production in 2009 was approximately 241.6 million tons. Multiplying this tonnage by the $60.73 price per ton in 2010 results in estimated revenues of $14.7 billion. The annualized cost of the final rule, including penalty payments, for these mines is approximately $24.7 million. Dividing estimated costs for the rule by estimated revenues results in 0.2 percent of annual revenues. The average compliance cost for an underground mine with 1–500 employees is $59,950 ($24.7 million divided by 412 mines).

For surface coal mines with 1–19 employees, coal production in 2009 was approximately 19.7 million tons. Multiplying this tonnage by the $24.13 price per ton in 2010 results in estimated revenues of $475.7 million. The annualized cost of the final rule, including penalty payments, for these mines is approximately $1.0 million.

[63] U.S. DOE, EIA, ''Annual Coal Report 2010,'' Table 28, *http://www.eia.gov/coal/annual/archive/05842010.pdf.*

Dividing estimated costs by estimated revenues results in 0.2 percent of annual revenues. The average compliance cost for a surface mine with 1–19 employees is $1,625 ($1.0 million divided by 620 mines).

For surface coal mines with 1–500 employees, coal production in 2009 was approximately 494.8 million tons. Multiplying this tonnage by the $24.13 price per ton in 2010 results in estimated revenues of $11.9 billion. The annualized cost of the final rule, including penalty payment, for these mines is approximately $3.7 million. Dividing estimated costs into estimated revenues results in 0.03 percent of annual revenues. The average compliance cost for a surface mine with 1–500 employees is $3,300 ($3.7 million divided by 1,119 mines).

Based on all analyses, the annualized costs of the final rule are less than one percent of annual revenue for both small underground and surface coal mines, as defined by SBA. Therefore, MSHA certifies that the final rule will not have a significant impact on a substantial number of small mining entities. Chapter VI of the REA to the final rule contains a complete analysis of the cost impact on small mines.

VII. Paperwork Reduction Act of 1995

A. Summary

The Paperwork Reduction Act (PRA) provides for the Federal government's collection, use, and dissemination of information. The goals of the PRA include minimizing paperwork and reporting burdens and ensuring the maximum possible utility from the information that is collected under 5 CFR part 1320. There are provisions of this final rule that take effect at different times after the final rule is effective and there are provisions that have different burden hours, burden costs, and responses each year. Because of this, MSHA shows the estimates of burden hours, burden costs and responses in three separate years.

In the first year that the final rule is in effect, the mining community will incur 181,955 burden hours with related hour burden costs of approximately $9,722,897 and 3,991,079 responses related to the information collection.

In the second year that the final rule is in effect, the mining community will incur 175,101 burden hours with related burden costs of approximately $9,413,180 and 3,924,609 responses related to the information collection.

In the third year that the final rule is in effect, the mining community will incur 171,908 burden hours with related burden costs of approximately $9,324,041 and 3,874097 responses related to the information collection.

B. Procedural Details

The Department will, concurrent with publication of this rule, submit the information collections contained in this final rule to the Office of Management and Budget (OMB) for review under the PRA, as part of a request for a new control number (Information Collection Review (ICR) Reference No: 201012–1219–003) and will begin revisions to Control Numbers 1219–0088, 1219–0011, 1219–0009. The Department will publish an additional Notice on OMB's action on the ICR and when the information collection requirements will take effect. The regulated community is not required to respond to any collection of information unless it displays a current, valid, OMB control number. MSHA displays the OMB control numbers for the ICR in its regulations in 30 CFR part 3. The total information collection burden is summarized as follows:

Title of Collection: Ventilation Plans, Tests, and Examinations in Underground Mines; OMB Control Number: 1219–0088.

Title of Collection: Mine Operator Dust Data Cards; OMB Control Number: 1219–0011.

Title of Collection: Respirator Program Records; OMB Control Number: 1219–0009.

Title of Collection: Medical Surveillance; OMB Control Number: 1219–0NEW.

Affected Public: Private sector-businesses or other for-profits.

Estimated Number of Respondents: 1,547 respondents.

Estimated Number of Responses: 3,991,079 responses in the first year; 3,924,609 responses in the second year; and 3,874,097 responses in the third year.

Estimated Number of Burden Hours: 181,955 hours in the first year; 175,101 hours in the second year; and 171,908 hours in the third year.

Estimated Hour Burden Costs: $9,722,897 in the first year; $9,413,180 in the second year and $9,324,041 in the third year.

Estimated Capital Costs Related to the Information Collection Package: $69,931 in the first year; $52,547 in the second year; and $39,523 in the third year.

MSHA received comments on the information collection requirements contained in the proposed rule. These comments are addressed in applicable sections of Section IV, Section-by-Section Analysis, of this preamble and in the Supporting Statement for the information collection requirements for this final rule. The Information Collection Supporting Statement is available at *http://www.reginfo.gov/public/do/PRAMain,* on MSHA's Web site at *http://www.msha.gov/regs/fedreg/informationcollection/informationcollection.asp,* and at *http://www.regulations.gov*. A copy of the Statement is also available from MSHA by request to Sheila McConnell at *mcconnell.sheila.a@dol.gov,* by phone request to 202–693–9440, or by facsimile to 202–693–9441.

VIII. Other Regulatory Considerations

A. National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) requires each Federal agency to consider the environmental effects of final actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the environment. The final respirable coal mine dust rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500) and the Department of Labor's NEPA compliance procedures (29 CFR part 11). In the **Federal Register** of October 19, 2010 (75 FR 64412), MSHA made a preliminary determination that the proposed respirable coal mine dust rule was of a type that does not have a significant impact on the human environment. MSHA's preliminary determination was based on its environmental assessment which considered the factors set forth in 29 CFR 11.11(c). MSHA has complied with the requirements of the NEPA, including the Department of Labor's compliance procedures and the regulations of the Council on Environmental Quality. The Agency has not received any new information or comments that would affect its previous determination. As a result of the Agency's review of the final respirable coal mine dust rule, MSHA has concluded that the rule will not have significant environmental impacts, and therefore an environmental impact statement is not required.

B. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.). MSHA has determined that this final rule does not include any federal mandate that may result in increased

expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) requires no further Agency action or analysis.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that the final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. The final rule impacts the coal mine industry. Accordingly, MSHA certifies that the final rule will not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This final rule does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

The final rule was written to provide a clear legal standard for affected conduct and was reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, the final rule meets the applicable standards provided in § 3 of E.O. 12988, Civil Justice Reform.

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

The final rule has no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

G. Executive Order 13132: Federalism

The final rule does not have ''federalism implications'' because it 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.'' Accordingly, under E.O. 13132, no further Agency action or analysis is required.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The final rule does not have ''tribal implications'' because it does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Accordingly, under E.O. 13175, no further Agency action or analysis is required.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. The final rule has been reviewed for its impact on the supply, distribution, and use of energy because it applies to the coal mining industry. Insofar as MSHA estimates that the final rule will result in annualized costs of $27.1 million (includes costs to underground coal mine operators and penalty costs) for the underground coal industry relative to annual revenues of $20 billion in 2010 dollars and annualized costs of $4.0 million (includes costs to surface coal mine operators and penalty costs) for the surface coal industry relative to annual revenue of $17.9 billion in 2010 dollars, it is not a ''significant energy action'' because it is not ''likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases, and increased use of foreign supplies).'' Accordingly, Executive Order 13211 requires no further Agency action or analysis.

J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the final rule does not have a significant economic impact on a substantial number of small entities.

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X. Appendix A—Excessive Concentration Values

The Excessive Concentration Value (ECV) tables ensure that noncompliance is cited only when there is a 95-percent level of confidence that the applicable respirable dust standard has actually been exceeded. All measurements of respirable coal mine dust concentrations, whether taken using an approved CMDPSU or CPDM, are subject to sampling and analytical (weighing) error. Such errors cause individual concentration measurements to deviate above or below the true concentration value in the mine atmosphere. Therefore, when determining noncompliance, MSHA must ensure that the applicable standard has actually been exceeded.

The final rule provides for a margin of error in each measurement to reduce the risk of finding that a mine operator is in noncompliance when the applicable standard was not exceeded. The ECV tables in the final rule include this margin of error.

For example, when using a CMDPSU to sample an entity on a 2.0 mg/m^3 standard, a single-shift measurement of 2.14 mg/m^3 would not, according to Table 70–1, indicate noncompliance at a 95-percent confidence level. Rather, this measurement indicates that the MMU was probably out of compliance. However, because there is a small chance that the measurement exceeded the respirable dust standard only because of possible measurement error, a citation would not be issued. Similarly, a single-shift measurement of 1.92 mg/m^3 may not indicate compliance at a 95-percent confidence level under a 2.0 mg/m^3 standard.

Furthermore, even if a single-shift measurement showed that the mine atmosphere was in compliance, at a 95-percent confidence level, at the sampling location on a given shift, additional measurements would be required to demonstrate compliance on each shift. For example, if S = 2.0 mg/m^3, then a valid measurement of 1.65 mg/m^3 demonstrates compliance on the particular shift and at the particular location sampled. It would not, however, demonstrate compliance on other shifts or at other locations.

In the final rule, the ECVs for a single, full-shift concentration measurement are similar to the proposed rule except that the tables are combined to be more user-friendly. The proposed ECV tables that were based on CMDPSU sampling (proposed Tables 70–1, 71–1 and 90–1) and the proposed ECV tables that were based on CPDM sampling (proposed Tables 70–2, 71–2 and 90–2) are combined into one table in each part in the final rule. For example, Table 70–1 in the final rule combines proposed Table 70–1, which established the ECVs based on single-shift measurements taken with a CMDPSU, with proposed Table 70–2, which established the ECVs based on single-shift measurements taken with a CPDM. In addition, in response to comments, MSHA has established ECVs based on the average of multiple samples. These ECVs are

included in final Tables 70–2, 71–2, and 90–2.

Each ECV, whether based on a single-shift CMDPSU or CPDM measurement or on the average of multiple, full-shift CMDPSU or CPDM concentration measurements, was calculated so that if the ECV is met or exceeded, it can be inferred with at least 95-percent confidence that the applicable standard has been exceeded on the particular shift sampled or at the sampled occupation or location during the period sampled.

The ECV tables do not depend on how the applicable standard was established, or on any measurement uncertainties in the process of setting the applicable standard.

Derivation of Final Tables 70–1, 71–1, and 90–1 Based on Single Full-Shift Concentration Measurements

Dust concentration measurements vary partly because of measurement error and partly because of differences in the dust concentration being measured. Therefore, in deriving the ECVs, MSHA distinguished between variability due to measurement (sampling and weighing) error and variability due to actual differences in dust concentration. The distinction between measurement error and variation in the true dust concentration is more easily explained by defining some notational abbreviations.

Dust samples are collected in the same MMU or other mine area on a particular shift. Since it is necessary to distinguish between different samples in the same MMU, let X_i represent the equivalent MRE dust concentration measurement obtained from the ith sample. The quantity being measured is the true, single-shift average dust concentration at the ith sampling location and is denoted by μ_i. Because of potential measurement errors, μ_i can never be known with complete certainty. A ''sample,'' ''measurement,'' or ''observation'' always refers to an instance of X_i rather than μ_i.

The overall measurement error associated with an individual measurement is the difference between the measurement (X_i) and the quantity being measured (μ_i). Therefore, this error can be represented as

$$\varepsilon_i = X_i - \mu_i.$$

Equivalently, any measurement can be regarded as the true concentration in the atmosphere sampled, with a measurement error added on:

$$X_i = \mu_i + \varepsilon_i.$$

For two different measurements (X_1 and X_2), it follows that X_1 may differ from X_2 because of the combined effects of ε_1 and ε_2, and because μ_1 differs from μ_2.

The probability distribution of X_i around μ_i depends only on the probability distribution of ε_i and should not be confused with the statistical distribution of μ_i, which arises from spatial and/or temporal variability in dust concentration. This variability (i.e., among μ_i for different values of *i*) is not associated with inadequacies of the measurement system, but real variation in exposures due to the fact that contaminant generation rates vary in time and contaminants are heterogeneously distributed in workplace air.

If noncompliance determinations are made relative to individual sampling locations on a shift, derivation of the tables require no assumptions or inferences about the spatial or temporal pattern of atmospheric dust concentrations—i.e., the statistical distribution of μ_i. MSHA is not evaluating dust concentrations averaged across the different occupational sampling locations. Therefore, the degree and pattern of variability observed among different measurements obtained during MSHA sampling are not used in establishing any ECV. Instead, the ECV for each applicable dust standard (S) is based entirely on the distribution of measurement errors (ε_i) expected for the maximum dust concentration in compliance with that standard—i.e., a concentration equal to S itself.

If control filters are used to eliminate potential biases as when sampling using an approved CMDPSU, then each ε_i arises from a combination of four weighing errors (pre- and post-exposure for both the control and exposed filter capsule) and a continuous summation of instantaneous measurement errors accumulated over the course of the full shift. Since the full shift being sampled can be subdivided into an arbitrarily large number of sub-intervals, and some fraction of ε_i is associated with each sub-interval, ε_i can be represented as comprising the sum of an arbitrarily large number of sub-interval errors. By the Central Limit Theorem, such a summation tends to be normally distributed, regardless of the distribution of sub-interval errors. This does not depend on the distribution of μ_i, which is generally represented as being lognormal.

Any systematic error or bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. Any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules is also mathematically canceled out. Elimination of the sources of systematic errors identified above, together with the fact that the concentration of respirable dust is defined by section 202(e) of the Mine Act to mean the average concentration of respirable dust measured by an approved sampler unit, indicates that the measurements are unbiased. This means that ε_i is equally likely to be positive or negative and, on average, equal to zero.

Therefore, each ε_i is assumed to be normally distributed, with a mean value of zero and a degree of variability represented by its standard deviation:

$$\sigma_i = \mu_i \cdot CV_{total}$$

Since $X_i = \mu_i + \varepsilon_i$, it follows that for a given value of μ_i, X_i is normally distributed with expected value equal to μ_i and standard deviation equal to σ_i. CV_{total}, is the coefficient of variation in measurements corresponding to a given value of μ_i. CV_{total} relates entirely to variability due to measurement errors and not at all to variability in actual dust concentrations.

The procedure for determining noncompliance with applicable standards based on Tables 70–1, 71–1, and 90–1 consists of formally testing a presumption of compliance at every location sampled. Compliance with the applicable dust standard at the *ith* sampling location is expressed by the relation $\mu_i \leq S$. Max$\{\mu_i\}$ denotes the maximum dust concentration, among all of the sampling locations within an MMU. Therefore, if Max$\{\mu_i\} \leq S$, none of the sampling devices in the MMU were exposed to excessive dust concentrations. Since MSHA must establish that the applicable standard has been exceeded, the hypothesis being tested (called the *null hypothesis,* or H_0,) is that the concentration at every location sampled is in compliance with the applicable standard. It follows that for an MMU, the null hypothesis (H_0) is that max$\{\mu_i\} \leq S$. In other areas, where only one, full-shift measurement is made, the null hypothesis is simply that $\mu_i \leq S$.

The test consists of evaluating the likelihood of measurements under the assumption that H_0 is true. Since $X_i = \mu_i + \varepsilon_i$, X_i (or max$\{X_i\}$ in the case of an MMU) can exceed S even under that assumption. However, based on the normal distribution of measurement errors, it is possible to calculate the probability that a measurement error would be large enough to account for the measurement's exceeding the standard. The greater the amount by which X_i exceeds S, the less likely it is that this would be due to measurement

error alone. If, under H_0, this probability is less than five percent, then H_0 can be rejected at a 95-percent confidence level and a finding of noncompliance with the applicable standard is warranted. For an MMU, rejecting H_0 (and therefore issuing a finding of noncompliance) is equivalent to determining that $\mu_i > S$ for at least one value of *i*.

Each ECV listed was calculated to ensure that, if the ECV is met or exceeded, it can be inferred with at least 95-percent confidence that the applicable standard has been exceeded. As described in MSHA's February 1994 notice, Coal Mine Respirable Dust Standard Noncompliance Determinations (59 FR 8356, February 18, 1994) and explained further by Kogut (Kogut, 1994), the tabled CMDPSU ECVs corresponding to each S were calculated on the assumption that, at each sampling location:

$$CV_{Total} \leq CV_{ECV} = \sqrt{\left(\frac{0.14\ mg/m^3}{\mu_i\ mg/m^3} \cdot 100\%\right)^2 + (5\%)^2 + (5\%)^2}$$

In July 2000, MSHA and NIOSH proposed a joint finding, ''Determination of Concentration of Respirable Coal Mine Dust'' (65 FR 42068, July 7, 2000). The joint finding stated that for valid measurements made with an approved CMDPSU, CV_{total} is, in fact, less than CV_{CTV} [64] at all dust concentrations (μ_i).

The circumstance in which measurement error is most likely to cause an erroneous noncompliance determination is the hypothetical case of $\mu_i = S$ for either a single-shift sample measurement or for all of the occupational measurements made in the same MMU. In that borderline situation—i.e., the worst case consistent with H_0—the standard deviation is identical for all measurement errors. Therefore, the value of σ used in constructing the CMDPSU ECV table is the product of S and CV_{ECV} evaluated for a dust concentration equal to S:

$$\sigma = S\sqrt{\left(\frac{0.14}{S}\right)^2 + (0.05)^2 + (0.05)^2}$$

Assuming a normal distribution of measurement errors as explained above, it follows that the probability a single measurement would equal or exceed the critical value

$c = S + 1.645 \cdot \sigma$

is five percent under H_0 when $CV_{total} = CV_{ECV}$. The tabled CMDPSU ECV corresponding to S is derived by raising the critical value c up to the next exact multiple of 0.01 mg/m³.

For example, at a dust concentration (μ_i) just meeting the applicable dust standard of S = 2 mg/m³, CV_{ECV} is 9.95 percent for a CMDPSU measurement. Therefore, the calculated value of c is 2.326 and the ECV is 2.33 mg/m³. Any valid single-shift measurement at or above this ECV is unlikely to be this large simply because of measurement error. Therefore, any such measurement should result in MSHA finding the operator to be in noncompliance with the applicable standard.

The probability that a measurement exceeds the ECV is even smaller if $\mu_i < S$ for any *i*. Furthermore, to the extent that CV_{total} is actually less than CV_{ECV}, σ is actually less than $S \cdot CV_{ECV}$. This results in a lower probability that the critical value would be exceeded under the null hypothesis. Consequently, if any single-shift measurement equals or exceeds c, then H_0 can be rejected at confidence level of at least 95-percent. Since rejection of H_0 implies that $\mu_i > S$ for at least one value of *i,* this should result in a finding of noncompliance.

When each of several measurements is separately compared to the ECV table, the probability that at least one ε_i will be large enough to force $X_i \geq$ ECV when $\mu_i \leq S$ is greater than the probability when only a single comparison is made. For example (still assuming S = 2 mg/m³), if CV_{total} is actually 6.6%, then the standard deviation of ε_i is 6.6% of 2.0 mg/m³, or 0.132 mg/m³, when $\mu_i = S$. Using properties of the normal distribution, the probability that any single measurement would exceed the ECV in this borderline situation is calculated to be 0.62%. However, the probability that at least one of five such measurements results in a citation is $1 - (0.9938)^5 = 3.1\%$. Therefore, the confidence level at which a citation can be issued, based on the maximum of five measurements made in the same MMU on a given shift, is 97%.

The constant 1.645 used in calculating the ECV is a 1-tailed 95-percent confidence coefficient and is derived from the standard normal probability distribution. Since the purpose of the ECV tables is to provide criteria for determining that the true dust concentration strictly exceeds the applicable dust standard and such a determination can occur only when a single-shift measurement is sufficiently high, there is exactly zero probability of erroneously finding an operator to be in noncompliance when a measurement falls below the lower confidence limit. Consequently, the total probability of erroneously finding an operator to be in noncompliance with the applicable standard equals the probability that a standard normal random variable exceeds 1.645, which is 5 percent.

The same statistical theory underlying the derivation of the CMDPSU ECVs applies in constructing the CPDM ECVs listed in Tables 70–1, 71–1, and 90–1 in the final rule. The initial step in the derivation process involves addressing uncertainty due to potential measurement errors. Measurement imprecision is quantified by the total coefficient of variation for overall measurement error, or CV_{total}, also sometimes called relative standard deviation (RSD). CV_{total} corresponding to the CPDM has been estimated by NIOSH to be 7.8 percent based on in-mine studies and is documented by Volkwein et al. (NIOSH RI 9669, 2006). The uncertainty due to measurement error is addressed by applying a margin of error before issuing a finding that the applicable standard was exceeded.

[64] The term ''Concentration Threshold Value'' (CTV) used in the July 7, 2000 Joint Finding was renamed the Excessive Concentration Value (ECV) in the October 19, 2010 proposed rule (75 FR 64412).

Applying this margin of error ensures that noncompliance determinations are made only when there is at least 95-percent confidence that the applicable standard has been exceeded. To achieve this confidence level, the applicable margin of error is constructed by applying an *error factor* appropriate for the measurement being considered. The *error factor* is calculated as:

$EF = 1 + (1.645 \times CV_{total})$

Therefore, when CV_{total} = 7.8 percent, the calculated value of *EF* is 1.128. If, for example, the sampled occupation is on a 1.5 mg/m³ standard, the operator would be in violation of the applicable standard if a single, full-shift MRE-equivalent concentration measurement times the *EF* exceeds 1.692 mg/m³ [1.5 × 1.128]. The ECV corresponding to each applicable standard is derived by simply raising the calculated ECV to the next exact multiple of 0.01 mg/m³. Therefore, the ECV corresponding to the applicable standard of 1.5 mg/m³ is 1.70 mg/m³. Since it is unlikely that any valid CPDM end-of shift equivalent concentration is this large simply because of measurement error, it can be inferred with at least 95-percent confidence that the applicable standard has been exceeded. The same procedures were followed in calculating ECVs corresponding to other applicable standards.

Derivation of Final Tables 70–2, 71–2, and 90–2 Based on Average of Concentration Measurements

The ECVs in final Tables 70–2, 71–2 and 90–2 apply to the average of all operators' valid representative samples. The ECVs in final Tables 70–2, 71–2 and 90–2, like final Tables 70–1, 71–1 and 90–1, provide a margin of error to address uncertainty due to measurement error. When the ECV that corresponds to the applicable standard, the particular sampling device used, and appropriate sample size is met or exceeded, it can be inferred with at least 95-percent confidence that the applicable standard has been exceeded at the particular MMU, or at the sampled occupation or location, during the period sampled.

Tables 70–2, 71–2 and 90–2 in the final rule were developed in response to commenters' concerns that MSHA failed to address measurement errors when evaluating compliance with the proposed weekly permissible accumulated exposure (WPAE) limit. The final rule does not include the proposed WPAE approach. It includes an alternative method of making a compliance determination based on the average of all samples.

Under the final rule, the ECVs for 5 and 15 full-shift average equivalent concentration measurements were calculated taking into consideration measurement variability (σ) and the probability (95-percent confidence level) of not being in error when determining noncompliance based on the multi-shift average. For both the CMDPSU and CPDM, the measurement variabilities used were the same as those previously estimated by the standard propagation-of-errors formula to construct the single-sample ECVs in the proposal. These estimates of measurement variability for the average of the respirable dust concentration measurements just meeting the applicable standard were then substituted into the following equation:

$$c = S + 1.645\left(\frac{\sigma}{\sqrt{n}}\right)$$

Where *c* represents the Critical Value or quantity to be met or exceeded to establish that the average of the respirable dust concentration measurements exceeds the applicable standard.

S is the Applicable Standard; 1.645 is the 1-tailed 95-percent confidence coefficient obtained from the standard normal probability distribution; σ is the appropriate measurement variability; and *n* is the number of full-shift measurements included. The ECV corresponding to *S* is derived by raising the critical value *c* up to the next exact multiple of 0.01 mg/m³.

The following discussion illustrates when the 15-sample CMDPSU average concentration exceeds the applicable standard of 2.0 mg/m³ standard. Assuming the average concentration is meeting the applicable standard S = 2 mg/m³, which corresponds to a CV_{ECV} of 9.95 percent for a single, full-shift measurement, the value of measurement variability σ used in constructing the ECV tables is the product of S and CV_{ECV} evaluated for an average concentration equal to S:

$$\sigma = S\sqrt{\left(\frac{0.14}{S}\right)^2 + (0.05)^2 + (0.05)^2}$$

Substituting the appropriate value for σ in this example which equals 0.199 mg/m³ (2.0 mg/m³ × 9.95%) into the equation:

$$c = S + 1.645\left(\frac{\sigma}{\sqrt{n}}\right)$$

yields the calculated value of c or 2.085 mg/m³. Therefore, a 15-sample average CMDPSU concentration at or above 2.09 mg/m³ is unlikely to be this large because of measurement error. If the average concentration of the 15 CMDPSU samples meets or exceeds 2.09 mg/m³, then the 2.0 mg/m³ standard is exceeded.

The following example illustrates when a 5-sample CPDM average concentration exceeds the applicable standard for a part 90 miner on a 1.0 mg/m³ dust standard. For respirable dust levels that are approximately 1.0 mg/m³, the estimate of measurement error σ is 0.078 mg/m³. When substituted in the above equation, the calculated value of *c* is 1.057 mg/m³ and the ECV is 1.06 mg/m³. If the average concentration of the 5 CPDM samples meets or exceeds 1.06 mg/m³, then the 1.0 mg/m³ standard is exceeded.

List of Subjects

30 CFR Part 70

Coal, Incorporation by reference, Mine safety and health, Reporting and recordkeeping requirements, Respirable dust, Underground coal mines.

30 CFR Part 71

Coal, Incorporation by reference, Mine safety and heath, Reporting and recordkeeping requirements, Surface coal mines, Underground coal mines.

30 CFR Part 72

Coal, Health standards, Mine safety and health, training, Underground mines.

30 CFR Part 75

Coal, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines, Ventilation.

30 CFR Part 90

Coal, Incorporation by reference, Mine safety and health.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons discussed in the preamble, the Mine Safety and Health Administration is amending 30 CFR parts 70, 71, 72, 75 and 90 as follows:

PART 70—MANDATORY HEALTH STANDARDS FOR UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811, 813(h), 957.

■ 2. Subpart A to part 70 is revised to read as follows:

Subpart A—General

Sec.

70.1 Scope.
70.2 Definitions.

Subpart A—General

§ 70.1 Scope.

This part 70 sets forth mandatory health standards for each underground coal mine subject to the Federal Mine Safety and Health Act of 1977, as amended.

§ 70.2 Definitions.

The following definitions apply in this part.

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164 and Public Law 109–236.

Active workings. Any place in a coal mine where miners are normally required to work or travel.

Approved sampling device. A sampling device approved by the Secretary and Secretary of Health and Human Services (HHS) under part 74 of this title.

Certified person. An individual certified by the Secretary in accordance with § 70.202 to take respirable dust samples required by this part or certified in accordance with § 70.203 to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

Coal mine dust personal sampler unit (CMDPSU). A personal sampling device approved under part 74, subpart B, of this title.

Concentration. A measure of the amount of a substance contained per unit volume of air.

Continuous personal dust monitor (CPDM). A personal sampling device approved under part 74, subpart C of this title.

Designated area (DA). A specific location in the mine identified by the operator in the mine ventilation plan under § 75.371(t) of this title where samples will be collected to measure respirable dust generation sources in the active workings; approved by the District Manager; and assigned a four-digit identification number by MSHA.

Designated occupation (DO). The occupation on a mechanized mining unit (MMU) that has been determined by results of respirable dust samples to have the greatest respirable dust concentration.

District Manager. The manager of the Coal Mine Safety and Health District in which the mine is located.

Equivalent concentration. The concentration of respirable coal mine dust, including quartz, expressed in milligrams per cubic meter of air (mg/m^3) as measured with an approved sampling device, determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter (sampling time in minutes (t) times the sampling airflow rate in cubic meters per minute), and then converting that concentration to an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by multiplying the concentration of respirable coal mine dust by the constant factor prescribed by the Secretary.

(2) The CPDM, the device shall be programmed to automatically report end-of-shift concentration measurements as equivalent concentrations.

Mechanized mining unit (MMU). A unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which uses mining equipment other than specified in § 70.206(b) or in § 70.208(b) of this part. Each MMU will be assigned a four-digit identification number by MSHA, which is retained by the MMU regardless of where the unit relocates within the mine. However, when:

(1) Two sets of mining equipment are used in a series of working places within the same working section and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment shall be identified as a single MMU.

(2) Two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of mining equipment shall be identified as a separate MMU.

MRE instrument. The gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

MSHA. The Mine Safety and Health Administration of the U.S. Department of Labor.

Normal production shift. A production shift during which the amount of material produced by an MMU is at least equal to 80 percent of the average production recorded by the operator for the most recent 30 production shifts or for all production shifts if fewer than 30 shifts of production data are available.

Other designated occupation (ODO). Other occupation on an MMU that is designated for sampling required by this part in addition to the DO. Each ODO shall be identified by a four-digit identification number assigned by MSHA.

Production shift. With regard to an MMU, a shift during which material is produced; with regard to a DA of a mine, a shift during which material is produced and routine day-to-day activities are occurring in the DA.

Quartz. Crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure.

Representative sample. A respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels and with regard to an MMU, normal mining activities in the active workings during which the amount of material produced is equivalent to a normal production shift; or with regard to a DA, material is produced and routine-day-to-day activities are occurring.

Respirable dust. Dust collected with a sampling device approved by the Secretary and the Secretary of HHS in accordance with part 74 (Coal Mine Dust Sampling Devices) of this title.

Secretary. The Secretary of Labor or a delegate.

Valid respirable dust sample. A respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

■ 3. Subpart B to part 70 is revised to read as follows:

Subpart B—Dust Standards

Sec.
70.100 Respirable dust standards.
70.101 Respirable dust standard when quartz is present.

Subpart B—Dust Standards

§ 70.100 Respirable dust standards.

(a) Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed, as measured with an approved sampling device and expressed in terms of an equivalent concentration, at or below:

(1) 2.0 milligrams of respirable dust per cubic meter of air (mg/m^3).

(2) 1.5 mg/m^3 as of August 1, 2016.

(b) Each operator shall continuously maintain the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways as measured with an approved sampling device and

expressed in terms of an equivalent concentration at or below:

(1) 1.0 mg/m³.

(2) 0.5 mg/m³ as of August 1, 2016.

§ 70.101 Respirable dust standard when quartz is present.

(a) Each operator shall continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 0.1 mg/m³ (100 micrograms per cubic meter or μg/m³) as measured with an approved sampling device and expressed in terms of an equivalent concentration.

(b) When the equivalent concentration of respirable quartz dust exceeds 100 μg/m³, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed as measured with an approved sampling device and expressed in terms of an equivalent concentration at or below the applicable dust standard. The applicable dust standard is computed by dividing the percent of quartz into the number 10. The application of this formula shall not result in an applicable dust standard that exceeds the standard established by § 70.100(a).

Example: Assume the sampled MMU or DA is on a 1.5-mg/m³ dust standard. Suppose a valid representative dust sample with an equivalent concentration of 1.12 mg/m³ contains 12.3% of quartz dust, which corresponds to a quartz concentration of 138 μg/m³. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that MMU or DA shall be maintained on each shift at or below 0.8 mg/m³ (10/12.3% = 0.8 mg/m³).

■ 4. Subpart C to part 70 is revised to read as follows:

Subpart C—Sampling Procedures

Sec.
70.201 Sampling; general and technical requirements.
70.202 Certified person; sampling.
70.203 Certified person; maintenance and calibration.
70.204 Approved sampling devices; maintenance and calibration.
70.205 Approved sampling devices; operation; air flowrate.
70.206 Bimonthly sampling; mechanized mining units.
70.207 Bimonthly sampling; designated areas.
70.208 Quarterly sampling; mechanized mining units.
70.209 Quarterly sampling; designated areas.
70.210 Respirable dust samples; transmission by operator.
70.211 Respirable dust samples; report to operator; posting.
70.212 Status change reports.

Tables to Subpart C
Table 70–1 Excessive Concentration Values (ECV) Based on Single, Full-Shift CMDPSU/CPDM Concentration Measurements
Table 70–2 Excessive Concentration Values (ECV) Based on the Average of 5 or 15 Full-Shift CMDPSU/CPDM Concentration Measurements

Subpart C—Sampling Procedures

§ 70.201 Sampling; general and technical requirements.

(a) Only an approved coal mine dust personal sampler unit (CMDPSU) shall be used to take bimonthly samples of the concentration of respirable coal mine dust from the designated occupation (DO) in each MMU as required by this part until Janaury 31, 2016. On February 1, 2016, DOs in each MMU shall be sampled quarterly with an approved CPDM as required by this part and an approved CMDPSU shall not be used, unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling.

(b) Only an approved CMDPSU shall be used to take bimonthly samples of the concentration of respirable coal mine dust from each designated area (DA) as required by this part until January 31, 2016. On February 1, 2016:

(1) DAs associated with an MMU shall be redesignated as Other Designated Occupations (ODO). ODOs shall be sampled quarterly with an approved CPDM as required by this part and an approved CMDPSU shall not be used, unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling.

(2) DAs identified by the operator under § 75.371(t) of this chapter shall be sampled quarterly with an approved CMDPSU as required by this part, unless the operator notifies the District Manager in writing that only an approved CPDM will be used for all DA sampling at the mine. The notification must be received at least 90 days before the beginning of the quarter in which CPDMs will be used to collect the DA samples.

(c) Sampling devices shall be worn or carried directly to the MMU or DA to be sampled and from the MMU or DA sampled and shall be operated portal-to-portal. Sampling devices shall remain with the occupation or DA being sampled and shall be operational during the entire shift, which includes the total time spent in the MMU or DA and while traveling to and from the mining section or area being sampled. If the work shift to be sampled is longer than 12 hours and the sampling device is:

(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.

(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.

(d) If using a CMDPSU, one control filter shall be used for each shift of sampling. Each control filter shall:

(1) Have the same pre-weight date (noted on the dust data card) as the filters used for sampling;

(2) Remain plugged at all times;

(3) Be used for the same amount of time, and exposed to the same temperature and handling conditions as the filters used for sampling;

(4) Be kept with the exposed samples after sampling and in the same mailing container when transmitted to MSHA.

(e) Records showing the length of each production shift for each MMU shall be made and retained for at least six months and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners, and submitted to the District Manager when requested in writing.

(f) Upon request from the District Manager, the operator shall submit the date and time any respirable dust sampling required by this part will begin. This information shall be submitted at least 48 hours prior to the scheduled sampling.

(g) To establish a normal production shift, the operator shall record the amount of run-of-mine material produced by each MMU during each shift to determine the average production for the most recent 30 production shifts, or for all production shifts if fewer than 30 shifts of production data are available. Production records shall be retained for at least six months and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(h) Operators using CPDMs shall provide training to all miners expected to wear a CPDM. The training shall be completed prior to a miner wearing a CPDM and then every 12 months thereafter. The training shall include:

(1) The importance of monitoring dust concentrations and properly wearing the CPDM.

(2) Explaining the basic features and capabilities of the CPDM;

(3) Discussing the various types of information displayed by the CPDM and how to access that information; and

(4) How to start and stop a short-term sample run during compliance sampling.

(i) An operator shall keep a record of the CPDM training at the mine site for 24 months after completion of the training. An operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. Upon request from an authorized representative of the Secretary, Secretary of HHS, or representative of miners, the operator shall promptly provide access to any such training records. The record shall include:

(1) The date of training;

(2) The names of miners trained; and

(3) The subjects included in the training.

(j) An anthracite mine using the full box, open breast, or slant breast mining method may use either a CPDM or a CMDPSU to conduct the required sampling. The mine operator shall notify the District Manager in writing of its decision to not use a CPDM.

(k) MSHA approval of the dust control portion of the operator's mine ventilation plan may be revoked based on samples taken by MSHA or in accordance with this part 70.

§ 70.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in sampling procedures. Persons not certified in sampling, and those certified only in maintenance and calibration procedures in accordance with § 70.203(b), are not permitted to collect respirable dust samples required by this part or handle approved sampling devices when being used in sampling.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required sampling procedures.

§ 70.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in maintenance and calibration procedures for approved sampling devices. Necessary maintenance of the sampling head assembly of a CMDPSU, or the cyclone assembly of a CPDM, can be performed by persons certified in sampling or in maintenance and calibration.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required maintenance and calibration procedures.

§ 70.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 of this title and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers'' or in accordance with the manufacturer's recommendations, if using a CPDM. Only persons certified in maintenance and calibration can perform maintenance work on the CPDM or the pump unit of the CMDPSU.

(b) Sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute (L/min) if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer, before they are put into service and, thereafter, at time intervals recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

(c) If using a CMDPSU, each sampling device shall be examined and tested by a person certified in sampling or in maintenance and calibration within 3 hours before the start of the shift on which the approved sampling devices will be used to collect respirable dust samples. This is to assure that the sampling devices are clean and in proper working condition. This examination and testing shall include the following:

(1) Examination of all components of the cyclone assembly to assure that they are clean and free of dust and dirt. This includes examining the interior of the connector barrel (located between the cassette assembly and vortex finder), vortex finder, cyclone body, and grit pot;

(2) Examination of the inner surface of the cyclone body to assure that it is free of scoring or scratch marks on the inner surface of the cyclone where the air flow is directed by the vortex finder into the cyclone body;

(3) Examination of the external hose connecting the pump unit to the sampling head assembly to assure that it is clean and free of leaks; and

(4) Examination of the clamping and positioning of the cyclone body, vortex finder, and cassette to assure that they are rigid, in alignment, firmly in contact, and airtight.

(5) Testing the voltage of each battery while under actual load to assure the battery is fully charged. This requires that a fully assembled and examined sampling head assembly be attached to the pump inlet with the pump unit running when the voltage check is made. The voltage for the batteries used in the CMDPSU shall not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell value.

(d) If using a CPDM, the certified person in sampling or in maintenance and calibration shall:

(1) Follow the pre-operational examinations, testing, and set-up procedures, and perform necessary external maintenance recommended by the manufacturer to assure the operational readiness of each CPDM within 3 hours before the start of the shift on which the sampling devices will be used to collect respirable dust samples; and

(2) Perform other required scheduled examinations and maintenance procedures recommended by the manufacturer.

(e) You must proceed in accordance with ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers,'' MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section. 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 from the MSHA Web site at *http://www.msha.gov* and you may inspect or obtain a copy at MSHA, Coal Mine Safety and Health, 1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939 and at each MSHA Coal Mine Safety and Health District Office, 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.*

§ 70.205 Approved sampling devices; operation; air flowrate.

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer.

(b) If using a CMDPSU, each approved sampling device shall be examined each shift by a person certified in sampling during:

(1) The second hour after being put into operation to assure it is in the proper location, operating properly, and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person. This examination is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

(2) The last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the back of the dust data card stating that the proper flowrate was not maintained. Other events occurring during the collection of respirable dust samples that may affect the validity of the sample, such as dropping of the sampling head assembly onto the mine floor, shall be noted on the back of the dust data card.

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved mine ventilation plan to assure: The sampling device is in the proper location and operating properly; and the work environment of the occupation or DA being sampled remains in compliance with the applicable standard at the end of the shift. This monitoring is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

§ 70.206 Bimonthly sampling; mechanized mining units.

Until January 31, 2016:

(a) Each operator shall take five valid representative samples from the designated occupation (DO) in each mechanized mining unit (MMU) during each bimonthly period. DO samples shall be collected on consecutive normal production shifts or normal production shifts each of which is worked on consecutive days. The bimonthly periods are:

January 1–February 28 (29)
March 1–April 30
May 1–June 30
July 1–August 31
September 1–October 31
November 1–December 31

(b) Unless otherwise directed by the District Manager, the DO samples shall be taken by placing the approved sampling device as specified in paragraphs (b)(1) through (b)(10) of this section.

(1) *Conventional section using cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(2) *Conventional section blasting off the solid.* On the loading machine operator or on the loading machine within 36 inches inby the normal working position;

(3) *Continuous mining section other than auger-type.* On the continuous mining machine operator or on the continuous mining machine within 36 inches inby the normal working position;

(4) *Continuous mining machine; auger-type.* On the jacksetter who works nearest the working face on the return air side of the continuous mining machine or at a location that represents the maximum concentration of dust to which the miner is exposed;

(5) *Scoop section using cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(6) *Scoop section, blasting off the solid.* On the coal drill operator or on the coal drill within 36 inches inby the normal working position;

(7) *Longwall section.* On the miner who works nearest the return air side of the longwall working face or along the working face on the return side within 48 inches of the corner;

(8) *Hand loading section with a cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(9) *Hand loading section blasting off the solid.* On the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed;

(10) *Anthracite mine sections.* On the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed.

(c) When the respirable dust standard is changed in accordance with § 70.101, the new applicable standard shall become effective 7 calendar days after the date of the notification of the change by MSHA.

(d) If a normal production shift is not achieved, the DO sample for that shift may be voided by MSHA. However, any sample, regardless of production, that exceeds the applicable standard by at least 0.1 mg/m^3 shall be used in the determination of the equivalent concentration for that MMU.

(e) When a valid representative sample taken in accordance with this section meets or exceeds the excessive concentration value (ECV) in Table 70–1 that corresponds to the applicable standard and particular sampling device used, the operator shall:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the applicable respirable dust standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(f) Noncompliance with the applicable standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and particular sampling device used.

(g) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard involving a DO in an MMU, paragraph (a) of this section shall not apply to that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

(h) Upon issuance of a citation for violation of the applicable standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or

equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected occupation in the MMU on consecutive normal production shifts until five valid representative samples are taken.

(i) A citation for a violation of the applicable standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the applicable standard; and

(2) The operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan applicable to the MMU in the citation, and the changes have been approved by the District Manager. The revised parameters shall reflect the control measures used by the operator to abate the violation.

§ 70.207 Bimonthly sampling; designated areas.

Until January 31, 2016:

(a) Each operator shall take one valid representative sample from each designated area (DA) on a production shift during each bimonthly period. The bimonthly periods are:

February 1–March 31
April 1–May 31
June 1–July 31
August 1–September 30
October 1–November 30
December 1–January 31.

(b) When the respirable dust standard is changed in accordance with § 70.101, the new applicable standard shall become effective 7 calendar days after the date of the notification of the change by MSHA.

(c) Upon notification from MSHA that any valid sample taken from a DA to meet the requirements of paragraph (a) of this section exceeds the applicable standard, the operator shall take five valid representative samples from that DA within 15 calendar days. The operator shall begin such sampling on the first day on which there is a production shift following the day of receipt of notification.

(d) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used, the operator shall:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(e) Noncompliance with the applicable standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in Table 70–1 that corresponds to the applicable standard and the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and the particular sampling device used.

(f) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard, paragraph (a) of this section shall not apply to that DA until the violation is abated and the citation is terminated in accordance with paragraphs (g) and (h) of this section.

(g) Upon issuance of a citation for violation of the applicable standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected DA on consecutive normal production shifts until five valid representative samples are taken.

(h) A citation for a violation of the applicable standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the applicable standard; and

(2) The operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan applicable to the DA in the citation, and the changes have been approved by the District Manager. The revised parameters shall reflect the control measures used by the operator to abate the violation.

§ 70.208 Quarterly sampling; mechanized mining units.

On February 1, 2016:

(a) The operator shall sample each calendar quarter:

(1) The designated occupation (DO) in each MMU on consecutive normal production shifts until 15 valid representative samples are taken. The District Manager may require additional groups of 15 valid representative samples when information indicates the operator has not followed the approved ventilation plan for any MMU.

(2) Each other designated occupation (ODO) specified in paragraphs (b)(1) through (b)(10) of this section in each MMU or specified by the District Manager and identified in the approved mine ventilation plan on consecutive normal production shifts until 15 valid representative samples are taken. Sampling of each ODO type shall begin after fulfilling the sampling requirements of paragraph (a)(1) of this section. When required to sample more than one ODO type, each ODO type must be sampled over separate time periods during the calendar quarter.

(3) The quarterly periods are:

January 1–March 31
April 1–June 30
July 1–September 30
October 1–December 31.

(b) Unless otherwise directed by the District Manager, the approved

sampling device shall be worn by the miner assigned to perform the duties of the DO or ODO specified in paragraphs (b)(1) through (b)(10) of this section or by the District Manager for each type of MMU.

(1) *Conventional section using cutting machine.* DO—The cutting machine operator;

(2) *Conventional section blasting off the solid.* DO—The loading machine operator;

(3) *Continuous mining section other than auger-type.* DO—The continuous mining (CM) machine operator or mobile bridge operator when using continuous haulage; ODO—The roof bolting machine operator who works nearest the working face on the return air side of the continuous mining machine; the face haulage operators on MMUs using blowing face ventilation; the face haulage operators on MMUs ventilated by split intake air (''fishtail ventilation'') as part of a super-section; and face haulage operators where two continuous mining machines are operated on an MMU.

(4) *Continuous mining section using auger-type machine.* DO—The jacksetter who works nearest the working face on the return air side of the continuous mining machine;

(5) *Scoop section using cutting machine.* DO—The cutting machine operator;

(6) *Scoop section, blasting off the solid.* DO—The coal drill operator;

(7) *Longwall section.* DO—The longwall operator working on the tailgate side of the longwall mining machine; ODO—The jacksetter who works nearest the return air side of the longwall working face, and the mechanic;

(8) *Hand loading section with a cutting machine.* DO—The cutting machine operator;

(9) *Hand loading section blasting off the solid.* DO—The hand loader exposed to the greatest dust concentration; and

(10) *Anthracite mine sections.* DO—The hand loader exposed to the greatest dust concentration.

(c) When the respirable dust standard is changed in accordance with § 70.101, the new applicable standard shall become effective 7 calendar days after the date of notification of the change by MSHA.

(d) If a normal production shift is not achieved, the DO or ODO sample for that shift may be voided by MSHA. However, any sample, regardless of production, that exceeds the applicable standard by at least 0.1 mg/m^3 shall be used in the determination of the equivalent concentration for that occupation.

(e) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in Table 70–1 that corresponds to the applicable standard and particular sampling device used, the operator shall:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the applicable respirable dust standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(f) Noncompliance with the applicable standard is demonstrated during the sampling period when:

(1) Three or more valid representative samples meet or exceed the ECV in Table 70–1 that corresponds to the applicable standard and the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and the particular sampling device used.

(g)(1) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard involving a DO in an MMU, paragraph (a)(1) shall not apply to the DO in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

(2) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard involving a type of ODO in an MMU, paragraph (a)(2) shall not apply to that ODO type in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

(h) Upon issuance of a citation for violation of the applicable standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected occupation in the MMU on consecutive normal production shifts until five valid representative samples are taken.

(i) A citation for violation of the applicable standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the applicable standard; and

(2) The operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan applicable to the MMU in the citation and the changes have been approved by the District Manager. The revised parameters shall reflect the control measures used by the operator to abate the violation.

§ 70.209 Quarterly sampling; designated areas.

On February 1, 2016:

(a) The operator shall sample quarterly each designated area (DA) on consecutive production shifts until five valid representative samples are taken. The quarterly periods are:

January 1–March 31
April 1–June 30
July 1–September 30
October 1–December 31.

(b) When the respirable dust standard is changed in accordance with § 70.101, the new applicable standard shall become effective 7 calendar days after the date of the notification of the change by MSHA.

(c) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in Table 70–1 that corresponds to the applicable standard and particular

sampling device used, the operator shall:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the applicable respirable dust standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(d) Noncompliance with the applicable standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in Table 70–1 that corresponds to the applicable standard and the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in Table 70–2 that corresponds to the applicable standard and particular sampling device used.

(e) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard, paragraph (a) of this section shall not apply to that DA until the violation is abated and the citation is terminated in accordance with paragraphs (f) and (g) of this section.

(f) Upon issuance of a citation for a violation of the applicable standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected DA on consecutive normal production shifts until five valid representative samples are taken.

(g) A citation for a violation of the applicable standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the applicable standard; and

(2) The operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan applicable to the DA in the citation, and the changes have been approved by the District Manager. The revised parameters shall reflect the control measures used by the operator to abate the violation.

§ 70.210 Respirable dust samples; transmission by operator.

(a) If using a CMDPSU, the operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part, including control filters, in containers provided by the manufacturer of the filter cassette to: Respirable Dust Processing Laboratory, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, Building 38, P.O. Box 18179, Pittsburgh, Pennsylvania 15236–0179, or to any other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in sampling shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person who actually performed the required examinations under 70.205(b) of this part during the sampling shift and shall include that person's MSHA Individual Identification Number (MIIN). Respirable dust samples with data cards not properly completed may be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71, or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71, or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

(f) If using a CPDM, the person certified in sampling shall (1) validate, certify, and transmit electronically to MSHA within 24 hours after the end of each sampling shift all sample data file information collected and stored in the CPDM, including the sampling status conditions encountered when sampling; and (2) not tamper with the CPDM or its components in any way before, during, or after it is used to fulfill the requirements of this part, or alter any sample data files. All CPDM data files transmitted electronically to MSHA shall be maintained by the operator for at least 12 months.

§ 70.211 Respirable dust samples; report to operator; posting.

(a) MSHA shall provide the operator, as soon as practicable, a report with the following data on respirable dust samples submitted or whose results were transmitted electronically, if using a CPDM, in accordance with this part:

(1) The mine identification number;

(2) The locations within the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration for each valid sample;

(4) The average equivalent concentration of respirable dust for all valid samples;

(5) The occupation code, where applicable; and

(6) The reason for voiding any sample.

(b) Upon receipt, the operator shall post this data for at least 31 days on the mine bulletin board.

(c) If using a CPDM, the person certified in sampling shall, within 12 hours after the end of each sampling shift, print, sign, and post on the mine bulletin board a paper record (Dust Data Card) of the sample run. This hard-copy record shall include the data entered when the sample run was first programmed, and the following:

(1) The mine identification number;

(2) The locations within the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration reported and stored for each sample;

(4) The sampling status conditions encountered for each sample; and

(5) The shift length.

(d) The information required by paragraph (c) of this section shall remain posted until receipt of the MSHA report covering these respirable dust samples.

§ 70.212 Status change reports.

(a) If there is a change in operational status that affects the respirable dust sampling requirements of this part, the operator shall report the change in operational status of the mine, mechanized mining unit, or designated area to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing or electronically within 3 working days after the status change has occurred.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) *Producing*—has at least one MMU unit producing material.

(ii) *Nonproducing*—no material is being produced.

(iii) *Abandoned*—the work of all miners has been terminated and production activity has ceased.

(2) MMU:

(i) *Producing*—producing material from a working section.

(ii) *Nonproducing*—temporarily ceased production of material.

(iii) *Abandoned*—permanently ceased production of material.

(3) DA:

(i) *Producing*—activity is occurring.

(ii) *Nonproducing*—activity has ceased.

(iii) *Abandoned*—the dust generating source has been withdrawn and activity has ceased.

Tables to Subpart C

TABLE 70–1—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE, FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m³)	ECV (mg/m³)	
	CMDPSU	CPDM
2.0	2.33	2.26

TABLE 70–1—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE, FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS—Continued

Applicable standard (mg/m³)	ECV (mg/m³)	
	CMDPSU	CPDM
1.9	2.22	2.15
1.8	2.12	2.04
1.7	2.01	1.92
1.6	1.90	1.81
1.5	1.79	1.70
1.4	1.69	1.58
1.3	1.59	1.47
1.2	1.47	1.36
1.1	1.37	1.25
1.0	1.26	1.13
0.9	1.16	1.02
0.8	1.05	0.91
0.7	0.95	0.79
0.6	0.85	0.68
0.5	0.74	0.57
0.4	0.65	0.46
0.3	0.54	0.34
0.2	0.44	0.23

TABLE 70–2—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON THE AVERAGE OF 5 OR 15 FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m³)	ECV (mg/m³) based on 5-sample average		ECV (mg/m³) based on 15-sample average	
	CMDPSU	CPDM	CMDPSU	CPDM
2.0	2.15	2.12	2.09	2.07
1.9	2.05	2.01	1.99	1.97
1.8	1.94	1.91	1.89	1.87
1.7	1.84	1.80	1.78	1.76
1.6	1.74	1.70	1.68	1.66
1.5	1.63	1.59	1.58	1.56
1.4	1.53	1.49	1.48	1.45
1.3	1.43	1.38	1.38	1.35
1.2	1.33	1.27	1.28	1.25
1.1	1.22	1.17	1.17	1.14
1.0	1.12	1.06	1.07	1.04
0.9	1.02	0.96	0.97	0.94
0.8	0.92	0.85	0.87	0.83
0.7	0.81	0.75	0.77	0.73
0.6	0.71	0.64	0.67	0.63
0.5	0.61	0.53	0.57	0.52
0.4	0.51	0.43	0.47	0.42
0.3	0.41	0.32	0.37	0.32
0.2	0.31	0.22	0.27	0.21

Subpart D—[Removed and Reserved]

■ 5. Subpart D to part 70 is removed and reserved.

PART 71—MANDATORY HEALTH STANDARDS FOR SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

■ 6. The authority citation for part 71 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

■ 7. Subpart A to part 71 is revised to read as follows:

Subpart A—General

Sec.
71.1 Scope.
71.2 Definitions.

Subpart A—General

§ 71.1 Scope.

This part 71 sets forth mandatory health standards for each surface coal mine and for the surface work areas of each underground coal mine subject to the Federal Mine Safety and Health Act of 1977, as amended.

§ 71.2 Definitions.

The following definitions apply in this part.

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164 and Public Law 109–236.

Active workings. Any place in a surface coal mine or the surface work area of an underground coal mine where miners are normally required to work or travel.

Approved sampling device. A sampling device approved by the Secretary and Secretary of Health and Human Services (HHS) under part 74 of this title.

Certified person. An individual certified by the Secretary in accordance with § 71.202 to take respirable dust samples required by this part or certified in accordance with § 71.203 to perform maintenance and calibration of respirable dust sampling equipment as required by this part.

Coal mine dust personal sampler unit (CMDPSU). A personal sampling device approved under part 74, subpart B, of this title.

Concentration. A measure of the amount of a substance contained per unit volume of air.

Continuous personal dust monitor (CPDM). A personal sampling device approved under part 74, subpart C, of this title.

Designated work position (DWP). A work position in a surface coal mine and surface work area of an underground coal mine designated for sampling to measure respirable dust generation sources in the active workings. Each DWP will be assigned a four-digit number assigned by MSHA identifying the specific physical portion of the mine that is affected, followed by a three-digit MSHA coal mining occupation code describing the location to which a miner is assigned in the performance of his or her regular duties.

District Manager. The manager of the Coal Mine Safety and Health District in which the mine is located.

Equivalent concentration. The concentration of respirable coal mine dust, including quartz, expressed in milligrams per cubic meter of air (mg/m^3) as measured with an approved sampling device, determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter (sampling time in minutes (t) times the sampling airflow rate in cubic meters per minute), and then converting that concentration to an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by multiplying the concentration of respirable coal mine dust by the constant factor prescribed by the Secretary.

(2) The CPDM, the device shall be programmed to automatically report end-of-shift concentration measurements as equivalent concentrations.

MRE instrument. The gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

MSHA. The Mine Safety and Health Administration of the U.S. Department of Labor.

Normal work shift. (1) A shift during which the regular duties of the DWP are performed while routine day-to-day mining activities are occurring in the rest of the mine and

(2) A shift during which there is no rain, or, if rain occurs, the rain does not suppress the respirable dust to the extent that sampling results will be measurably lower, in the judgment of the person certified under this part to conduct sampling.

Quartz. Crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure.

Representative sample. A respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels in the working environment of the DWP when performing normal duties.

Respirable dust. Dust collected with a sampling device approved by the Secretary and the Secretary of HHS in accordance with part 74 (Coal Mine Dust Sampling Devices) of this title.

Secretary. The Secretary of Labor or a delegate.

Surface area. A specific physical portion of a surface coal mine or surface area of an underground coal mine. These areas are assigned a four-digit identification number by MSHA.

Surface coal mine. A surface area of land and all structures, facilities, machinery, tools, equipment, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, including custom coal preparation facilities.

Surface installation. Any structure in which miners work at a surface coal mine or surface work area of an underground coal mine.

Surface work area of an underground mine. The surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed in, upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing the coal so extracted, including custom coal preparation facilities.

Surface worksite. Any area in which miners work at a surface coal mine or surface work area of an underground coal mine.

Valid respirable dust sample. A respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

Work position. An occupation identified by an MSHA three-digit code number describing a location to which a miner is assigned in the performance of his or her normal duties.

■ 8. Subpart B to part 71 is revised to read as follows:

Subpart B—Dust Standards

Sec.
71.100 Respirable dust standard.
71.101 Respirable dust standard when quartz is present.

Subpart B—Dust Standards

§ 71.100 Respirable dust standard.

Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed, as measured with an approved sampling device and expressed in terms of an equivalent concentration, at or below:

(a) 2.0 milligrams of respirable dust per cubic meter of air (mg/m^3).

(b) 1.5 mg/m^3 as of August 1, 2016.

§ 71.101 Respirable dust standard when quartz is present.

(a) Each operator shall continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 0.1 mg/m^3 (100 micrograms per cubic meter or μg/m^3) as measured with an approved sampling device and expressed in terms of an equivalent concentration.

(b) When the equivalent concentration of respirable quartz dust exceeds 100

μg/m³, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed as measured with an approved sampling device and expressed in terms of an equivalent concentration at or below the applicable standard. The applicable standard is computed by dividing the percent of quartz into the number 10. The application of this formula shall not result in the applicable standard that exceeds the standard established by § 71.100(a) of this section.

Example: Assume the sampled DWP is on a 1.5-mg/m³ dust standard. Suppose a valid representative dust sample with an equivalent concentration of 1.09 mg/m³ contains 16.7% of quartz dust, which corresponds to a quartz concentration of 182 μg/m³. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that DWP shall be maintained on each shift at or below 0.6 mg/m³ (10/16.7% = 0.6 mg/m³).

■ 9. Subpart C to part 71 is revised to read as follows:

Subpart C—Sampling Procedures

Sec.
71.201 Sampling; general and technical requirements.
71.202 Certified person; sampling.
71.203 Certified person; maintenance and calibration.
71.204 Approved sampling devices; maintenance and calibration.
71.205 Approved sampling devices; operation; air flowrate.
71.206 Quarterly sampling; designated work positions.
71.207 Respirable dust samples; transmission by operator.
71.208 Respirable dust samples; report to operator; posting.
71.209 Status change reports.

Subpart C—Sampling Procedures

§ 71.201 Sampling; general and technical requirements.

(a) Each operator shall take representative samples of the concentration of respirable dust in the active workings of the mine as required by this part only with an approved CMDPSU. On February 1, 2016, the operator may use an approved CPDM if the operator notifies the District Manager in writing that only an approved CPDM will be used for all DWP sampling at the mine. The notification must be received at least 90 days before the beginning of the quarter in which CPDMs will be used to collect the DWP samples.

(b) Sampling devices shall be worn or carried directly to and from the DWP to be sampled. Sampling devices shall remain with the DWP and shall be operational during the entire shift, which includes the total time spent in the DWP and while traveling to and from the DWP being sampled. If the work shift to be sampled is longer than 12 hours and the sampling device is:

(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.

(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.

(c) If using a CMDPSU, one control filter shall be used for each shift of sampling. Each control filter shall:

(1) Have the same pre-weight data (noted on the dust data card) as the filters used for sampling;

(2) Remain plugged at all times;

(3) Be used for the same amount of time, and exposed to the same temperature and handling conditions as the filters used for sampling; and

(4) Be kept with the exposed samples after sampling and in the same mailing container when transmitted to MSHA.

(d) Records showing the length of each normal work shift for each DWP shall be made and retained for at least six months and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners, and submitted to the District Manager when requested in writing.

(e) Upon request from the District Manager, the operator shall submit the date and time any respirable dust sampling required by this part will begin. This information shall be submitted at least 48 hours prior to scheduled sampling.

(f) Upon written request by the operator, the District Manager may waive the rain restriction for a normal work shift as defined in § 71.2 for a period not to exceed two months, if the District Manager determines that:

(1) The operator will not have reasonable opportunity to complete the respirable dust sampling required by this part without the waiver because of the frequency of rain; and

(2) The operator did not have reasonable opportunity to complete the respirable dust sampling required by this part prior to requesting the waiver.

(g) Operators using CPDMs shall provide training to all miners expected to wear the CPDM. The training shall be completed prior to a miner wearing the CPDM and then every 12 months thereafter. The training shall include:

(1) The importance of monitoring dust concentrations and properly wearing the CPDM;

(2) Explaining the basic features and capabilities of the CPDM;

(3) Discussing the various types of information displayed by the CPDM and how to access that information; and

(4) How to start and stop a short-term sample run during compliance sampling.

(h) An operator shall keep a record of the CPDM training at the mine site for 24 months after completion of the training. An operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. Upon request from an authorized representative of the Secretary, Secretary of HHS, or representative of miners, the operator shall promptly provide access to any such training records. The record shall include:

(1) The date of training;

(2) The names of miners trained; and

(3) The subjects included in the training.

§ 71.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in sampling procedures. Persons not certified in sampling, and those certified only in maintenance and calibration procedures in accordance with § 71.203(b), are not permitted to collect respirable dust samples required by this part or handle approved sampling devices when being used in sampling.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required sampling procedures.

§ 71.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in maintenance and calibration procedures for approved sampling devices. Necessary maintenance of the sampling head assembly of a CMDPSU, or the cyclone assembly of a CPDM, can be performed by persons certified in sampling or maintenance and calibration.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required maintenance and calibration procedures.

§ 71.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers'' or in accordance with the manufacturer's recommendations if using a CPDM. Only persons certified in maintenance and calibration can perform maintenance work on the CPDM or on the pump unit of the CMDPSU.

(b) Sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute (L/min) if using a CMDPSU, or at 2.2 L/min if using a CPDM, or at a different flowrate recommended by the manufacturer, before they are put into service and, thereafter, at time intervals recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

(c) If using a CMDPSU, sampling devices shall be examined and tested by a person certified in sampling or in maintenance and calibration within 3 hours before the start of the shift on which the approved sampling devices will be used to collect respirable dust samples. This is to assure that the sampling devices are clean and in proper working condition. This examination and testing shall include the following:

(1) Examination of all components of the cyclone assembly to assure that they are clean and free of dust and dirt. This includes examining the interior of the connector barrel (located between the cassette assembly and vortex finder), vortex finder, cyclone body, and grit pot;

(2) Examination of the inner surface of the cyclone body to assure that it is free of scoring or scratch marks on the inner surface of the cyclone where the air flow is directed by the vortex finder into the cyclone body;

(3) Examination of the external hose connecting the pump unit to the sampling head assembly to assure that it is clean and free of leaks; and

(4) Examination of the clamping and positioning of the cyclone body, vortex finder, and cassette to assure that they are rigid, in alignment, firmly in contact, and airtight.

(5) Testing the voltage of each battery while under actual load to assure the battery is fully charged. This requires that a fully assembled and examined sampling head assembly be attached to the pump inlet with the pump unit running when the voltage check is made. The voltage for the batteries used in the CMDPSU shall not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell value.

(d) If using a CPDM, the certified person in sampling or in maintenance and calibration shall:

(1) Follow the pre-operational examinations, testing, and set-up procedures, and perform necessary external maintenance recommended by the manufacturer to assure the operational readiness of the CPDM within 3 hours before the start of the shift on which the sampling devices will be used to collect respirable dust samples; and

(2) Perform other required scheduled examinations and maintenance procedures recommended by the manufacturer.

(e) You must proceed in accordance with ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers,'' MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section. 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 from the MSHA Web site at *http://www.msha.gov* and you may inspect or obtain a copy at MSHA, Coal Mine Safety and Health, 1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939 and at each MSHA Coal Mine Safety and Health District Office, 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.*

§ 71.205 Approved sampling devices; operation; air flowrate.

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min, if using a CMDPSU; at 2.2 L/min, if using a CPDM; or at a different flowrate recommended by the manufacturer.

(b) If using a CMDPSU, each sampling device shall be examined each shift by a person certified in sampling during:

(1) The second hour after being put into operation to assure it is in the proper location, operating properly, and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person.

(2) The last hour of operation to assure that it is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the back of the dust data card stating that the proper flowrate was not maintained. Other events occurring during the collection of respirable dust samples that may affect the validity of the sample, such as dropping of the sampling head assembly onto the mine floor, shall be noted on the back of the dust data card.

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved respirable dust control plan, if applicable, to assure: The sampling device is in the proper location and operating properly; and the work environment of the occupation being sampled remains in compliance with the applicable standard at the end of the shift.

§ 71.206 Quarterly sampling; designated work positions.

(a) Each operator shall take one valid representative sample from the DWP during each quarterly period. The quarterly periods are:

January 1–March 31
April 1–June 30
July 1–September 30
October 1–December 31.

(b) When the respirable dust standard is changed in accordance with § 71.101, the new applicable standard shall become effective 7 calendar days after the date of the notification of the change by MSHA.

(c) Designated work position samples shall be collected at locations to measure respirable dust generation sources in the active workings. The specific work positions at each mine where DWP samples shall be collected include:

(1) Each highwall drill operator (MSHA occupation code 384);

(2) Bulldozer operators (MSHA occupation code 368); and

(3) Other work positions designated by the District Manager for sampling in accordance with § 71.206(m).

(d) Operators with multiple work positions specified in paragraph (c)(2) and (c)(3) of this section shall sample the DWP exposed to the greatest respirable dust concentration in each work position performing the same activity or task at the same location at the mine and exposed to the same dust generation source. Each operator shall

provide the District Manager with a list identifying the specific work positions where DWP samples will be collected for:

(1) Active mines—by October 1, 2014.

(2) New mines—Within 30 calendar days of mine opening.

(3) DWPs with a change in operational status that increases or reduces the number of active DWPs—within 7 calendar days of the change in status.

(e) Each DWP sample shall be taken on a normal work shift. If a normal work shift is not achieved, the respirable dust sample shall be transmitted to MSHA with a notation by the person certified in sampling on the back of the dust data card stating that the sample was not taken on a normal work shift. When a normal work shift is not achieved, the sample for that shift may be voided by MSHA. However, any sample, regardless of whether a normal work shift was achieved, that exceeds the applicable standard by at least 0.1 mg/m^3 shall be used in the determination of the equivalent concentration for that occupation.

(f) Unless otherwise directed by the District Manager, DWP samples shall be taken by placing the sampling device as follows:

(1) *Equipment operator:* On the equipment operator or on the equipment within 36 inches of the operator's normal working position.

(2) *Non-equipment operators:* On the miner assigned to the DWP or at a location that represents the maximum concentration of dust to which the miner is exposed.

(g) Upon notification from MSHA that any valid representative sample taken from a DWP to meet the requirements of paragraph (a) of this section exceeds the applicable standard, the operator shall, within 15 calendar days of notification, sample that DWP each normal work shift until five valid representative samples are taken. The operator shall begin sampling on the first normal work shift following receipt of notification.

(h) When a valid representative sample taken in accordance with this section meets or exceeds the excessive concentration value (ECV) in Table 71–1 that corresponds to the applicable standard and particular sampling device used, the operator shall:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(i) Noncompliance with the applicable standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in Table 71–1 that corresponds to the applicable standard and the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in Table 71–2 that corresponds to the applicable standard and the particular sampling device used.

(j) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard, paragraph (a) of this section shall not apply to that DWP until the violation is abated and the citation is terminated in accordance with paragraphs (k) and (l) of this section.

(k) Upon issuance of a citation for violation of the applicable standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected DWP on consecutive normal work shifts until five valid representative samples are taken.

(l) A citation for violation of the applicable standard shall be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is at or below the applicable standard.

TABLE 71–1—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE, FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m^3)	ECV (mg/m^3)	
	CMDPSU	CPDM
2.0	2.33	2.26
1.9	2.22	2.15
1.8	2.12	2.04
1.7	2.01	1.92
1.6	1.90	1.81
1.5	1.79	1.70
1.4	1.69	1.58
1.3	1.59	1.47
1.2	1.47	1.36
1.1	1.37	1.25
1.0	1.26	1.13
0.9	1.16	1.02
0.8	1.05	0.91
0.7	0.95	0.79
0.6	0.85	0.68
0.5	0.74	0.57
0.4	0.65	0.46
0.3	0.54	0.34
0.2	0.44	0.23

TABLE 71–2—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON THE AVERAGE OF 5 FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m^3)	ECV (mg/m^3)	
	CMDPSU	CPDM
2.0	2.15	2.12
1.9	2.05	2.01
1.8	1.94	1.91
1.7	1.84	1.80
1.6	1.74	1.70
1.5	1.63	1.59
1.4	1.53	1.49
1.3	1.43	1.38
1.2	1.33	1.27
1.1	1.22	1.17
1.0	1.12	1.06
0.9	1.02	0.96
0.8	0.92	0.85
0.7	0.81	0.75
0.6	0.71	0.64
0.5	0.61	0.53
0.4	0.51	0.43
0.3	0.41	0.32
0.2	0.31	0.22

(m) The District Manager may designate for sampling under this section additional work positions at a

surface coal mine and at a surface work area of an underground coal mine where a concentration of respirable dust exceeding 50 percent of the standard in effect at the time the sample is taken, or a concentration of respirable dust exceeding 50 percent of the standard established in accordance with § 71.101, has been measured by one or more MSHA valid representative samples.

(n) The District Manager may withdraw from sampling any DWP designated for sampling under paragraph (m) of this section upon finding that the operator is able to maintain continuing compliance with the applicable standard. This finding shall be based on the results of MSHA and operator valid representative samples taken during at least a 12-month period.

§ 71.207 Respirable dust samples; transmission by operator.

(a) If using a CMDPSU, the operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part, including control filters, in containers provided by the manufacturer of the filter cassette to: Respirable Dust Processing Laboratory, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, Building 38, P.O. Box 18179, Pittsburgh, Pennsylvania 15236–0179, or to any other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in sampling shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person who actually performed the required examinations under 71.205(b) of this part during the sampling shift and shall include that person's MSHA Individual Identification Number (MIIN). Respirable dust samples with data cards not properly completed may be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71, or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71, or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

(f) If using a CPDM, the person certified in sampling shall (1) validate, certify, and transmit electronically to MSHA within 24 hours after the end of each sampling shift all sample data file information collected and stored in the CPDM, including the sampling status conditions encountered when sampling each DWP; and (2) not tamper with the CPDM or its components in any way before, during, or after it is used to fulfill the requirements of this part, or alter any sample data files. All CPDM data files transmitted electronically to MSHA shall be maintained by the operator for at least 12 months.

§ 71.208 Respirable dust samples; report to operator; posting.

(a) MSHA shall provide the operator, as soon as practicable, a report with the following data on respirable dust samples submitted or whose results were transmitted electronically, if using a CPDM, in accordance with this part:

(1) The mine identification number;

(2) The DWP at the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration for each valid sample;

(4) The average equivalent concentration of respirable dust for all valid samples;

(5) The occupation code; and

(6) The reason for voiding any sample.

(b) Upon receipt, the operator shall post this data for at least 31 days on the mine bulletin board.

(c) If using a CPDM, the person certified in sampling shall, within 12 hours after the end of each sampling shift, print, sign, and post on the mine bulletin board a paper record (Dust Data Card) of each sample run. This hard-copy record shall include the data entered when the sample run was first programmed, and the following:

(1) The mine identification number;

(2) The DWP at the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration reported and stored for each sample;

(4) The sampling status conditions encountered for each sample; and

(5) The shift length.

(d) The information required by paragraph (c) of this section shall remain posted until receipt of the MSHA report covering these respirable dust samples.

§ 71.209 Status change reports.

(a) If there is a change in operational status that affects the respirable dust sampling requirements of this part, the operator shall report the change in operational status of the mine or DWP to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing or electronically within 3 working days after the status change has occurred.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) Producing—has at least one mechanized mining unit producing material.

(ii) Nonproducing—no material is being produced.

(iii) Abandoned—the work of all miners has been terminated and production activity has ceased.

(2) Surface mine:

(i) Producing—normal activity is occurring and coal is being produced or processed or other material or equipment is being handled or moved.

(ii) Nonproducing—normal activity is not occurring and coal is not being produced or processed, and other material or equipment is not being handled or moved.

(iii) Abandoned—the work of all miners has been terminated and all activity has ceased.

(3) DWP:

(i) Producing—normal activity is occurring.

(ii) Nonproducing—normal activity is not occurring.

(iii) Abandoned—the dust generating source has been withdrawn and activity has ceased.

■ 10. Subpart D to part 71 is revised to read as follows:

Subpart D—Respirable Dust Control Plans

Sec.
71.300 Respirable dust control plan; filing requirements.
71.301 Respirable dust control plan; approval by District Manager and posting.

Subpart D—Respirable Dust Control Plans

§ 71.300 Respirable dust control plan; filing requirements.

(a) Within 15 calendar days after the termination date of a citation for violation of the applicable standard, the operator shall submit to the District Manager for approval a written respirable dust control plan applicable to the DWP identified in the citation. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the

coal mine and shall be adequate to continuously maintain respirable dust to at or below the applicable standard at the DWP identified in the citation.

(1) The mine operator shall notify the representative of miners at least 5 days prior to submission of a respirable dust control plan and any revision to a dust control plan. If requested, the mine operator shall provide a copy to the representative of miners at the time of notification;

(2) A copy of the proposed respirable dust control plan, and a copy of any proposed revision, submitted for approval shall be made available for inspection by the representative of miners; and

(3) A copy of the proposed respirable dust control plan, and a copy of any proposed revision, submitted for approval shall be posted on the mine bulletin board at the time of submittal. The proposed plan or proposed revision shall remain posted until it is approved, withdrawn, or denied.

(4) Following receipt of the proposed plan or proposed revision, the representative of miners may submit timely comments to the District Manager, in writing, for consideration during the review process. Upon request, a copy of these comments shall be provided to the operator by the District Manager.

(b) Each respirable dust control plan shall include at least the following:

(1) The mine identification number and DWP number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name, address, and telephone number of the principal officer in charge of health and safety at the mine;

(2) The specific DWP at the mine to which the plan applies;

(3) A detailed description of the specific respirable dust control measures used to abate the violation of the respirable dust standard; and

(4) A detailed description of how each of the respirable dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place and manner the control measures will be used.

§ 71.301 Respirable dust control plan; approval by District Manager and posting.

(a) The District Manager will approve respirable dust control plans on a mine-by-mine basis. When approving respirable dust control plans, the District Manager shall consider whether:

(1) The respirable dust control measures would be likely to maintain concentrations of respirable coal mine dust at or below the applicable standard; and

(2) The operator's compliance with all provisions of the respirable dust control plan could be objectively ascertained by MSHA.

(b) MSHA may take respirable dust samples to determine whether the respirable dust control measures in the operator's plan effectively maintain concentrations of respirable coal mine dust at or below the applicable standard.

(c) The operator shall comply with all provisions of each respirable dust control plan upon notice from MSHA that the respirable dust control plan is approved.

(d) The approved respirable dust control plan and any revisions shall be:

(1) Provided upon request to the representative of miners by the operator following notification of approval;

(2) Made available for inspection by the representative of miners; and

(3) Posted on the mine bulletin board within 1 working day following notification of approval, and shall remain posted for the period that the plan is in effect.

(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.

PART 72—HEALTH STANDARDS FOR COAL MINES

■ 11. The authority citation for part 72 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

■ 12. Add subpart B to part 72 to read as follows:

Subpart B—Medical Surveillance

Sec.
72.100 Periodic examinations.

Subpart B—Medical Surveillance

§ 72.100 Periodic examinations.

(a) Each operator of a coal mine shall provide to each miner periodic examinations including chest x-rays, spirometry, symptom assessment, and occupational history at a frequency specified in this section and at no cost to the miner.

(1) Each operator shall use facilities approved by the National Institute for Occupational Safety and Health (NIOSH) to provide examinations specified in paragraph (a) of this section.

(2) The results of examinations or tests made pursuant to this section shall be furnished only to the Secretary, Secretary of Health and Human Services (HHS), and at the request of the miner, to the miner's designated physician.

(b) *Voluntary examinations.* Each operator shall provide the opportunity to have the examinations specified in § 72.100(a) at least every 5 years to all miners employed at a coal mine. The examinations shall be available during a 6-month period that begins no less than 3.5 years and not more than 4.5 years from the end of the last 6-month period.

(c) *Mandatory examinations.* For each miner who begins work at a coal mine for the first time, the operator shall provide examinations specified in § 72.100(a) as follows:

(1) An initial examination no later than 30 days after beginning employment;

(2) A follow-up examination no later than 3 years after the initial examination in paragraph (c)(1); and

(3) A follow-up examination no later than 2 years after the examinations in paragraph (c)(2) if the chest x-ray shows evidence of pneumoconiosis or the spirometry examination indicates evidence of decreased lung function. For this purpose, evidential criteria will be defined by NIOSH.

(d) Each mine operator shall develop and submit for approval to NIOSH a plan in accordance with 42 CFR part 37 for providing miners with the examinations specified in § 72.100(a) and a roster specifying the name and current address of each miner covered by the plan.

(e) Each mine operator shall post on the mine bulletin board at all times the approved plan for providing the examinations specified in § 72.100(a).

■ 13. Add §§ 72.700, 72.701, and 72.800 to subpart E of part 72 to read as follows:

Subpart E—Miscellaneous

§ 72.700 Respiratory equipment; respirable dust.

(a) Respiratory equipment approved by NIOSH under 42 CFR part 84 shall be made available to all persons as required under parts 70, 71, and 90 of this chapter. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain an adequate supply of respiratory equipment.

(b) When required to make respirators available, the operator shall provide training prior to the miner's next scheduled work shift, unless the miner received training within the previous 12 months on the types of respirators made available. The training shall include: The care, fit, use, and limitations of each type of respirator.

(c) An operator shall keep a record of the training at the mine site for 24 months after completion of the training.

An operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. Upon request from an authorized representative of the Secretary, Secretary of HHS, or representative of miners, the operator shall promptly provide access to any such training records. The record shall include:

(1) The date of training;

(2) The names of miners trained; and

(3) The subjects included in the training.

§ 72.701 Respiratory equipment; gas, dusts, fumes, or mists.

Respiratory equipment approved by NIOSH under 42 CFR part 84 shall be provided to persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mists. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

§ 72.800 Single, full-shift measurement of respirable coal mine dust.

The Secretary will use a single, full-shift measurement of respirable coal mine dust to determine the average concentration on a shift since that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift. Noncompliance with the applicable respirable dust standard or the applicable respirable dust standard when quartz is present, in accordance with subchapter O of this chapter, is demonstrated when a single, full-shift measurement taken by MSHA meets or exceeds the applicable ECV in Table 70–1, 71–1, or 90–1 that corresponds to the applicable standard and the particular sampling device used. Upon issuance of a citation for a violation of the applicable standard, and for MSHA to terminate the citation, the operator shall take the specified actions in subchapter O of this chapter.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 14. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

■ 15. Amend § 75.325 by revising paragraph (a)(2) to read as follows:

§ 75.325 Air quantity.

(a) * * *

(2) The quantity of air reaching the working face shall be determined at or near the face end of the line curtain, ventilation tubing, or other ventilation control device. If the curtain, tubing, or device extends beyond the last row of permanent roof supports, the quantity of air reaching the working face shall be determined behind the line curtain or in the ventilation tubing at or near the last row of permanent supports. When machine-mounted dust collectors are used in conjunction with blowing face ventilation systems, the quantity of air reaching the working face shall be determined with the dust collector turned off.

* * * * *

■ 16. Amend § 75.350 by revising paragraph (b)(3)(i) and (ii) to read as follows:

§ 75.350 Belt air course ventilation.

* * * * *

(b) * * *

(3)(i) The average concentration of respirable dust in the belt air course, when used as a section intake air course, shall be maintained at or below:

(A) 1.0 mg/m^3.

(B) 0.5 mg/m^3 as of August 1, 2016.

(ii) Where miners on the working section are on a reduced standard below that specified in § 75.350(b)(3)(i), the average concentration of respirable dust in the belt entry must be at or below the lowest applicable standard on that section.

* * * * *

■ 17. Amend § 75.362 by revising paragraphs (a)(2) and (g)(2) and adding paragraphs (g)(3) and (g)(4) to read as follows:

§ 75.362 On-shift examinations.

(a)(1) * * *

(2) A person designated by the operator shall conduct an examination and record the results and the corrective actions taken to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan. In those instances when a shift change is accomplished without an interruption in production on a section, the examination shall be made anytime within 1 hour after the shift change. In those instances when there is an interruption in production during the shift change, the examination shall be made before production begins on a section. Deficiencies in dust controls shall be corrected before production begins or resumes. The examination shall include: Air quantities and velocities; water pressures and flow rates; excessive leakage in the water delivery system; water spray numbers and orientations; section ventilation and control device placement; roof bolting machine dust collector vacuum levels; scrubber air flow rate; work practices required by the ventilation plan; and any other dust suppression measures. Measurements of the air velocity and quantity, water pressure and flow rates are not required if continuous monitoring of these controls is used and indicates that the dust controls are functioning properly.

* * * * *

(g) * * *

(2) The certified person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan shall:

(i) Certify by initials, date, and time on a board maintained at the section load-out or similar location showing that the examination was made prior to resuming production; and

(ii) Verify, by initials and date, the record of the results of the examination required under (a)(2) of this section to assure compliance with the respirable dust control parameters specified in the mine ventilation plan. The verification shall be made no later than the end of the shift for which the examination was made.

(3) The mine foreman or equivalent mine official shall countersign each examination record required under (a)(2) of this section after it is verified by the certified person under (g)(2)(ii) of this section, and no later than the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(4) Records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

■ 18. Amend § 75.371 by revising paragraphs (f), (j), and (t) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(f) Section and face ventilation systems used and the minimum quantity of air that will be delivered to the working section for each mechanized mining unit, including drawings illustrating how each system is used, and a description of each different dust suppression system used on equipment, identified by make and model, on each working section, including:

(1) The number, types, location, orientation, operating pressure, and flow rate of operating water sprays;

(2) The maximum distance that ventilation control devices will be

installed from each working face when mining or installing roof bolts in entries and crosscuts;

(3) Procedures for maintaining the roof bolting machine dust collection system in approved condition; and

(4) Recommended best work practices for equipment operators to minimize dust exposure.

* * * * *

(j) The operating volume of machine mounted dust collectors or diffuser fans, if used (see § 75.325(a)(3)), including the type and size of dust collector screen used, and a description of the procedures to maintain dust collectors used on equipment.

* * * * *

(t) The locations where samples for ''designated areas'' will be collected, including the specific location of each sampling device, and the respirable dust control measures used at the dust generating sources for these locations (see §§ 70.207 and 70.209 of this chapter).

* * * * *

PART 90—MANDATORY HEALTH STANDARDS—COAL MINERS WHO HAVE EVIDENCE OF THE DEVELOPMENT OF PNEUMOCONIOSIS

■ 19. The authority citation for part 90 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

■ 20. Subpart A to part 90 is revised to read as follows:

Subpart A—General

Sec.
90.1 Scope.
90.2 Definitions.
90.3 Part 90 option; notice of eligibility; exercise of option.

Subpart A—General

§ 90.1 Scope.

This part 90 establishes the option of miners who are employed at coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below the applicable standard as specified in § 90.100. The rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The rule also sets forth the operator's obligations, including respirable dust sampling for part 90 miners. This part 90 is promulgated pursuant to section 101 of the Act and supersedes section 203(b) of the Federal Mine Safety and Health Act of 1977, as amended.

§ 90.2 Definitions.

The following definitions apply in this part:

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164 and Public Law 109–236.

Active workings. Any place in a coal mine where miners are normally required to work or travel.

Approved sampling device. A sampling device approved by the Secretary and Secretary for Health and Human Services (HHS) under part 74 of this title.

Certified person. An individual certified by the Secretary in accordance with § 90.202 to take respirable dust samples required by this part or certified in accordance with § 90.203 to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

Coal mine dust personal sampler unit (CMDPSU). A personal sampling device approved under part 74, subpart B, of this title.

Concentration. A measure of the amount of a substance contained per unit volume of air.

Continuous personal dust monitor (CPDM). A personal sampling device approved under part 74, subpart C, of this title.

District Manager. The manager of the Coal Mine Safety and Health District in which the mine is located.

Equivalent concentration. The concentration of respirable coal mine dust, including quartz, expressed in milligrams per cubic meter of air (mg/m^3) as measured with an approved sampling device, determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the filter (sampling time in minutes (t) times the sampling airflow rate in cubic meters per minute), and then converting that concentration to an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by multiplying the concentration of respirable coal mine dust by the constant factor prescribed by the Secretary.

(2) The CPDM, the device shall be programmed to automatically report end-of-shift concentration measurements as equivalent concentrations.

Mechanized mining unit (MMU). A unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which uses mining equipment other than specified in § 70.206(b) or in § 70.208(b) of this chapter. Each MMU will be assigned a four-digit identification number by MSHA, which is retained by the MMU regardless of where the unit relocates within the mine. However, when:

(1) Two sets of mining equipment are used in a series of working places within the same working section and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment shall be identified as a single MMU.

(2) Two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of mining equipment shall be identified as a separate MMU.

MRE instrument. The gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

MSHA. The Mine Safety and Health Administration of the U.S. Department of Labor.

Normal work duties. Duties which the part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

Part 90 miner. A miner employed at a coal mine who has exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or under § 90.3 of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard, and who has not waived these rights.

Quartz. Crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure.

Representative sample. A respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels in the working environment of the part 90 miner when performing normal work duties.

Respirable dust. Dust collected with a sampling device approved by the Secretary and the Secretary of HHS in accordance with part 74 (Coal Mine Dust Sampling Devices) of this title.

Secretary. The Secretary of Labor or a delegate.

Secretary of Health and Human Services. The Secretary of Health and

Human Services (HHS) or the Secretary of Health, Education, and Welfare.

Transfer. Any change in the work assignment of a part 90 miner by the operator and includes: (1) Any change in occupation code of a part 90 miner; (2) any movement of a part 90 miner to or from an MMU; or (3) any assignment of a part 90 miner to the same occupation in a different location at a mine.

Valid respirable dust sample. A respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at a coal mine who, in the judgment of the Secretary of HHS, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of HHS, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard. Each of these miners shall be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, shall be a part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection.

(c) Any part 90 miner who is transferred to a position at the same or another coal mine shall remain a part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at a coal mine who was eligible for the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at a coal mine who exercised the option under the old section 203(b) program (36 FR 20601, October 27, 1971), or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209. The request should include the name and address of the mine and operator where the miner is employed.

(f) No operator shall require from a miner a copy of the medical information received from the Secretary or Secretary of HHS.

■ 21. Subpart B to part 90 is revised to read as follows:

Subpart B—Dust Standards, Rights of Part 90 Miners

Sec.
90.100 Respirable dust standard.
90.101 Respirable dust standard when quartz is present.
90.102 Transfer; notice.
90.103 Compensation.
90.104 Waiver of rights; re-exercise of option.

Subpart B—Dust Standards, Rights of Part 90 Miners

§ 90.100 Respirable dust standard.

After the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the part 90 miner in the active workings of the mine is exposed, as measured with an approved sampling device and expressed in terms of an equivalent concentration, at or below:

(a) 1.0 milligrams of respirable dust per cubic meter of air (mg/m^3).

(b) 0.5 mg/m^3 as of August 1, 2016.

§ 90.101 Respirable dust standard when quartz is present.

(a) Each operator shall continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which a part 90 miner in the active workings of each mine is exposed at or below 0.1 mg/m^3 (100 micrograms per cubic meter or μg/m^3) as measured with an approved sampling device and expressed in terms of an equivalent concentration.

(b) When the mine atmosphere of the active workings where the part 90 miner performs his or her normal work duties exceeds 100 μg/m^3 of respirable quartz dust, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a part 90 miner is exposed as measured with an approved sampling device and expressed in terms of an equivalent concentration at or below the applicable standard. The applicable standard is computed by dividing the percent of quartz into the number 10. The application of this formula shall not result in an applicable standard that exceeds the standards specified in § 90.100.

Example: Assume the part 90 miner is on a 0.5 mg/m^3 dust standard. Suppose a valid representative dust sample with an equivalent concentration of 0.50 mg/m^3 contains 25.6% of quartz dust, which corresponds to a quartz concentration of 128 μg/m^3. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that part 90 miner shall be maintained on each shift at or below 0.4 mg/m^3 (10/25.6% = 0.4 mg/m^3).

§ 90.102 Transfer; notice.

(a) Whenever a part 90 miner is transferred in order to meet the applicable standard, the operator shall transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer. The requirements of this paragraph do not apply when the respirable dust concentration in a part 90 miner's work position complies with the applicable standard but circumstances, such as reductions in workforce or changes in operational status, require a change in the miner's job or shift assignment.

(b) On or before the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice of the occupation and, if applicable, the MMU unit to which the part 90 miner shall be assigned on the 21st calendar day following receipt of the notification from MSHA.

(c) After the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice before any transfer of a part 90 miner. This notice shall include the scheduled date of the transfer.

§ 90.103 Compensation.

(a) The operator shall compensate each part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3.

(b) Whenever a part 90 miner is transferred, the operator shall compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.

(c) Once a miner has been placed in a position in compliance with the provisions of part 90, paragraphs (a) and (b) of this section do not apply when the part 90 miner initiates and accepts a change in work assignment for reasons of job preference.

(d) The operator shall compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part.

(e) In addition to the compensation required to be paid under paragraphs (a), (b), and (d) of this section, the operator shall pay each part 90 miner the actual wage increases that accrue to the classification to which the miner is assigned.

(f) If a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under § 90.3, the miner's regular rate of pay for purposes of paragraph (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the part 90 miner at his or her regular work classification rate regardless of the temporary wage rate.

(g) If a part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the part 90 option was incorrect, the operator shall retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the applicable rate of pay provided in paragraphs (a), (b), (d), and (e) of this section, until:

(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or

(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under § 90.3 or under the old section 203(b) program (36 FR 20601, October 27, 1971).

(i) When such a position is available, the operator shall offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.

(ii) If the affected miner accepts the available position in writing, the operator shall implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the available position in writing, the miner may be reassigned and protections under part 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

§ 90.104 Waiver of rights; re-exercise of option.

(a) A part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under part 90 by:

(1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part;

(2) Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding the applicable standard; or

(3) Refusing to accept another position offered by the operator at the same coal mine that meets the requirements of §§ 90.100, 90.101 and 90.102(a) after dust sampling shows that the present position exceeds the applicable standard.

(b) If rights under part 90 are waived, the miner gives up all rights under part 90 until the miner re-exercises the option in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option).

(c) If rights under part 90 are waived, the miner may re-exercise the option under this part in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option) at any time.

■ 22. Subpart C to part 90 is revised to read as follows:

Subpart C—Sampling Procedures

Sec.
90.201 Sampling; general and technical requirements.
90.202 Certified person; sampling.
90.203 Certified person; maintenance and calibration.
90.204 Approved sampling devices; maintenance and calibration.
90.205 Approved sampling devices; operation; air flowrate.
90.206 Exercise of option or transfer sampling.
90.207 Quarterly sampling.
90.208 Respirable dust samples; transmission by operator.
90.209 Respirable dust samples; report to operator.
90.210 Status change reports.

Subpart C—Sampling Procedures

§ 90.201 Sampling; general and technical requirements.

(a) An approved coal mine dust personal sampler unit (CMDPSU) shall be used to take samples of the concentration of respirable coal mine dust in the working environment of each part 90 miner as required by this part. On February 1, 2016, part 90 miners shall be sampled only with an approved continuous personal dust monitor (CPDM) as required by this part and an approved CMDPSU shall not be used, unless notified by the Secretary to continue to use an approved CMDPSU to conduct quarterly sampling.

(b) If using a CMDPSU, the sampling device shall be worn or carried to and from each part 90 miner. If using a CPDM, the sampling device shall be worn by the part 90 miner at all times. Approved sampling devices shall be operated portal-to-portal and shall remain operational during the part 90 miner's entire shift, which includes the time spent performing normal work duties and while traveling to and from the assigned work location. If the work shift to be sampled is longer than 12 hours and the sampling device is:

(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.

(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.

(c) Unless otherwise directed by the District Manager, the respirable dust samples required under this part using a CMDPSU shall be taken by placing the sampling device as follows:

(1) On the part 90 miner;

(2) On the piece of equipment which the part 90 miner operates within 36 inches of the normal working position; or

(3) At a location that represents the maximum concentration of dust to which the part 90 miner is exposed.

(d) If using a CMDPSU, one control filter shall be used for each shift of sampling. Each control filter shall:

(1) Have the same pre-weight date (noted on the dust data card) as the filter used for sampling;

(2) Remain plugged at all times;

(3) Be used for the same amount of time, and exposed to the same temperature and handling conditions as the filter used for sampling; and

(4) Be kept with the exposed samples after sampling and in the same mailing container when transmitted to MSHA.

(e) The respirable dust samples required by this part and taken with a CMDPSU shall be collected while the part 90 miner is performing normal work duties.

(f) Records showing the length of each shift for each part 90 miner shall be made and retained for at least six months, and shall be made available for inspection by authorized representatives

of the Secretary and submitted to the District Manager when requested in writing.

(g) Upon request from the District Manager, the operator shall submit the date and time any respirable dust sampling required by this part will begin. This information shall be submitted at least 48 hours prior to scheduled sampling.

(h) Operators using CPDMs shall provide training to all part 90 miners. The training shall be completed prior to a part 90 miner wearing a CPDM and then every 12 months thereafter. The training shall include:

(1) The importance of monitoring dust concentrations and properly wearing the CPDM;

(2) Explaining the basic features and capabilities of the CPDM;

(3) Discussing the various types of information displayed by the CPDM and how to access that information; and

(4) How to start and stop a short-term sample run during compliance sampling.

(i) An operator shall keep a record of the CPDM training at the mine site for 24 months after completion of the training. An operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. Upon request from an authorized representative of the Secretary or Secretary of HHS, the operator shall promptly provide access to any such training records. The record shall include:

(1) The date of training;

(2) The names of miners trained; and

(3) The subjects included in the training.

(j) An anthracite mine using the full box, open breast, or slant breast mining method may use either a CPDM or a CMDPSU to conduct the required sampling. The mine operator shall notify the District Manager in writing of its decision to not use a CPDM.

§ 90.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in sampling procedures. Persons not certified in sampling and those certified only in maintenance and calibration procedures in accordance with § 90.203(b) are not permitted to collect respirable dust samples required by this part or handle approved sampling devices when being used in sampling.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required sampling procedures.

§ 90.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in maintenance and calibration procedures for approved sampling devices. Necessary maintenance of the sampling head assembly of a CMDPSU, or the cyclone assembly of a CPDM, can be performed by persons certified in sampling or in maintenance and calibration.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.

(d) MSHA may revoke a person's certification for failing to properly carry out the required maintenance and calibration procedures.

§ 90.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 of this title and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers'' or in accordance with the manufacturer's recommendations if using a CPDM. Only persons certified in maintenance and calibration can perform maintenance on the CPDM or the pump unit of the CMDPSU.

(b) Approved sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute (L/min) if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer, before they are put into service and, thereafter, at time intervals recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

(c) If using a CMDPSU, sampling devices shall be examined and tested by a person certified in sampling or in maintenance and calibration within 3 hours before the start of the shift on which the approved sampling devices will be used to collect respirable dust samples. This is to assure that the sampling devices are clean and in proper working condition. This examination and testing shall include the following:

(1) Examination of all components of the cyclone assembly to assure that they are clean and free of dust and dirt. This includes examining the interior of the connector barrel (located between the cassette assembly and vortex finder), vortex finder, cyclone body, and grit pot;

(2) Examination of the inner surface of the cyclone body to assure that it is free of scoring or scratch marks on the inner surface of the cyclone where the air flow is directed by the vortex finder into the cyclone body;

(3) Examination of the external hose connecting the pump unit to the sampling head assembly to assure that it is clean and free of leaks; and

(4) Examination of the clamping and positioning of the cyclone body, vortex finder, and cassette to assure that they are rigid, in alignment, firmly in contact, and airtight.

(5) Testing the voltage of each battery while under actual load to assure the battery is fully charged. This requires that a fully assembled and examined sampling head assembly be attached to the pump inlet with the pump unit running when the voltage check is made. The voltage for batteries used in the CMDPSU shall not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell.

(d) If using a CPDM, the certified person in sampling or in maintenance and calibration shall:

(1) Follow the pre-operational examinations, testing, and set-up procedures, and perform necessary external maintenance recommended by the manufacturer to assure the operational readiness of the CPDM within 3 hours before the start of the shift on which the sampling device will be used to collect respirable dust samples; and

(2) Perform other required scheduled examinations and maintenance procedures recommended by the manufacturer.

(e) You must proceed in accordance with ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers,'' MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section. 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 from the MSHA Web site at *http://www.msha.gov* and you may inspect or obtain a copy at MSHA, Coal Mine Safety and Health, 1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209–3939 and at each MSHA Coal Mine Safety and Health District Office, 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*.

§ 90.205 Approved sampling devices; operation; air flowrate.

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer.

(b) If using a CMDPSU, each approved sampling device shall be examined each shift, by a person certified in sampling during:

(1) The second hour after being put into operation to assure it is in the proper location, operating properly, and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person. This examination is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

(2) The last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the back of the dust data card stating that the proper flowrate was not maintained. Other events occurring during the collection of respirable dust samples that may affect the validity of the sample, such as dropping of the sampling head assembly onto the mine floor, shall be noted on the back of the dust data card.

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved respirable dust control plan, if applicable, to assure: The sampling device is in the proper location and operating properly; and the work environment of the part 90 miner being sampled remains in compliance with the applicable standard at the end of the shift. This monitoring is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

§ 90.206 Exercise of option or transfer sampling.

(a) The operator shall take five valid representative dust samples for each part 90 miner within 15 calendar days after:

(1) The 20-day period specified for each part 90 miner in § 90.100; and

(2) Implementing any transfer after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine.

(b) Noncompliance with the applicable standard shall be determined in accordance with § 90.207(d) of this part.

(c) Upon issuance of a citation for a violation of the applicable standard, the operator shall comply with § 90.207(f) of this part.

§ 90.207 Quarterly sampling.

(a) Each operator shall take five valid representative samples every calendar quarter from the environment of each part 90 miner while performing normal work duties. Part 90 miner samples shall be collected on consecutive work days. The quarterly periods are:

January 1–March 31
April 1–June 30
July 1–September 30
October 1–December 31.

(b) When the respirable dust standard is changed in accordance with § 90.101, the new applicable standard shall become effective 7 calendar days after the date of notification of the change by MSHA.

(c) When a valid representative sample taken in accordance with this section meets or exceeds the excessive concentration value (ECV) in Table 90–1 that corresponds to the applicable standard and particular sampling device used, the operator shall:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the applicable standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the part 90 miner.

(d) Noncompliance with the applicable standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in Table 90–1 that corresponds to the applicable standard and the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in Table 90–2 that corresponds to the applicable standard and the particular sampling device used.

(e) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the applicable standard, paragraph (a) of this section shall not apply to that part 90 miner until the violation is abated and the citation is terminated in accordance with paragraphs (f) and (g) of this section.

(f) Upon issuance of a citation for a violation of the applicable standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to the affected part 90 miner in accordance with § 72.700 of this chapter.

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the applicable standard. If the corrective action involves:

(i) Reducing the respirable dust levels in the work position of the part 90 miner identified in the citation, the operator shall implement the proposed corrective actions and begin sampling the affected miner within 8 calendar days after the date the citation is issued, until five valid representative samples are taken.

(ii) Transferring the part 90 miner to another work position at the mine to meet the applicable standard, the operator shall comply with § 90.102 of this part and then sample the affected miner in accordance with § 90.206(a) of this part.

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration. Such records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the part 90 miner.

(g) A citation for a violation of the applicable standard shall be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is at or below the applicable standard.

TABLE 90–1—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE, FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m³)	ECV (mg/m³)	
	CMDPSU	CPDM
1.0	1.26	1.13
0.9	1.16	1.02
0.8	1.05	0.91
0.7	0.95	0.79
0.6	0.85	0.68
0.5	0.74	0.57
0.4	0.65	0.46
0.3	0.54	0.34
0.2	0.44	0.23

TABLE 90–2—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON THE AVERAGE OF 5 FULL-SHIFT CMDPSU/CPDM CONCENTRATION MEASUREMENTS

Applicable standard (mg/m³)	ECV (mg/m³)	
	CMDPSU	CPDM
1.0	1.12	1.06
0.9	1.02	0.96
0.8	0.92	0.85
0.7	0.81	0.75
0.6	0.71	0.64
0.5	0.61	0.53
0.4	0.51	0.43
0.3	0.41	0.32
0.2	0.31	0.22

§ 90.208 Respirable dust samples; transmission by operator.

(a) If using a CMDPSU, the operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part, including control filters, in containers provided by the manufacturer of the filter cassette to: Respirable Dust Processing Laboratory, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, Building 38, P.O. Box 18179, Pittsburgh, Pennsylvania 15236–0179, or to any other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in sampling shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person who actually performed the required examinations under 90.205(b) of this part during the sampling shift and shall include that person's MSHA Individual Identification Number (MIIN). Respirable dust samples with data cards not properly completed may be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71, or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71, or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

(f) If using a CPDM, the person certified in sampling shall (1) validate, certify, and transmit electronically to MSHA within 24 hours after the end of each sampling shift all sample data file information collected and stored in the CPDM, including the sampling status conditions encountered when sampling each part 90 miner; and (2) not tamper with the CPDM or its components in any way before, during, or after it is used to fulfill the requirements of this part, or alter any data files. All CPDM data files transmitted electronically to MSHA shall be maintained by the operator for at least 12 months.

§ 90.209 Respirable dust samples; report to operator.

(a) MSHA shall provide the operator, as soon as practicable, a report with the following data on respirable dust samples submitted or whose results were transmitted electronically, if using a CPDM, in accordance with this part:

(1) The mine identification number;

(2) The locations within the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration for each valid sample;

(4) The average equivalent concentration of respirable dust for all valid samples;

(5) The occupation code;

(6) The reason for voiding any sample; and

(7) The part 90 miner's MSHA Individual Identification Number (MIIN).

(b) Upon receipt, the operator shall provide a copy of this report to the part 90 miner. The operator shall not post the original or a copy of this report on the mine bulletin board.

(c) If using a CPDM, the person certified in sampling shall print, sign, and provide to each part 90 miner, a paper record (Dust Data Card) of the sample run within one hour after the start of the part 90 miner's next work shift. This hard-copy record shall include the data entered when the sample run was first programmed, and the following:

(1) The mine identification number;

(2) The location within the mine from which the sample was taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration reported and stored for each sample;

(4) The sampling status conditions encountered for each sample;

(5) The shift length; and

(6) The part 90 miner's MSHA Individual Identification Number (MIIN).

(d) The operator shall not post data on respirable dust samples for part 90 miners on the mine bulletin board.

§ 90.210 Status change reports.

If there is a change in the status of a part 90 miner (such as entering a terminated, injured, or ill status, or returning to work), the operator shall report the change in the status of the part 90 miner to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing or by electronic means within 3 working days after the status change has occurred.

■ 23. Subpart D to part 90 is revised to read as follows:

Subpart D—Respirable Dust Control Plans

Sec.
90.300 Respirable dust control plan; filing requirements.
90.301 Respirable dust control plan; approval by District Manager; copy to part 90 miner.

Subpart D—Respirable Dust Control Plans

§ 90.300 Respirable dust control plan; filing requirements.

(a) If an operator abates a violation of the applicable standard by reducing the respirable dust level in the position of the part 90 miner, the operator shall submit to the District Manager for approval a written respirable dust

control plan for the part 90 miner in the position identified in the citation within 15 calendar days after the citation is terminated. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust to at or below the applicable standard for that part 90 miner.

(b) Each respirable dust control plan shall include at least the following:

(1) The mine identification number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name, address and telephone number of the principal officer in charge of health and safety at the mine;

(2) The name and MSHA Individual Identification Number of the part 90 miner and the position at the mine to which the plan applies;

(3) A detailed description of the specific respirable dust control measures used to continuously maintain concentrations of respirable coal mine dust at or below the applicable standard; and

(4) A detailed description of how each of the respirable dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place, and manner the control measures will be used.

§ 90.301 Respirable dust control plan; approval by District Manager; copy to part 90 miner.

(a) The District Manager will approve respirable dust control plans on a mine-by-mine basis. When approving respirable dust control plans, the District Manager shall consider whether:

(1) The respirable dust control measures would be likely to maintain concentrations of respirable coal mine dust at or below the applicable standard; and

(2) The operator's compliance with all provisions of the respirable dust control plan could be objectively ascertained by MSHA.

(b) MSHA may take respirable dust samples to determine whether the respirable dust control measures in the operator's plan effectively maintain concentrations of respirable coal mine dust at or below the applicable standard.

(c) The operator shall comply with all provisions of each respirable dust control plan upon notice from MSHA that the respirable dust control plan is approved.

(d) The operator shall provide a copy of the current respirable dust control plan required under this part to the part 90 miner. The operator shall not post the original or a copy of the plan on the mine bulletin board.

(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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